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81-130

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1981

WESTERN MINING COUNCIL, et al.,

Petitioners,

v.

JAMES G. WATT, Secretary of the Interior of the United States of America,

Respondent.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
IN CASE No. 78-2669

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QUESTIONS PRESENTED

1. Whether plaintiffs had standing to sue for declaratory relief when they had not been prosecuted or threatened with criminal prosecution under the Federal Land Policy and Management Act of 1976 (FLPMA) prior to filing their complaint.

2. Whether plaintiffs had standing to sue for declaratory relief where plaintiffs' vested rights of ownership of their unpatented mining claims were retroactively changed from ownership as a matter of right to a matter of grace, in the absolute discretion of an authorized officer under an amendment of the mining law by the 1976 Act.

3. Whether plaintiffs stated a "case or controversy" by challenges to the constitutionality of 43 USC §§ 1701(a)(1), 1701(a)(3), 1732(b), 1733(a), (c), (g) and (e), 1734(b), 1735(a), 1740, 1744, 1761 to 1764, and 1781(c), alleging violation

of the Fourth, Fifth and Sixth Amendments, Article IV §3, and the two-year limitation upon appropriation for armies found in Article I §8 clause 12 of the Constitution of the United States.

PARTIES TO THE PROCEEDING

In addition to the parties named in the caption, the following parties plaintiff were named: Robert G. Wright, Cal-Ore Chapter Western Mining Council, Barney McClendon, Jr., Nor-Cal Chapter Western Mining Council, Richard Arbo, Hayfork Chapter Western Mining Council, Larry Cordtz, Prospectors & Miners Chapter of Shasta County, Western Mining Council, Carl Ripatte, Mother Lode Miners Association Chapter of Western Mining Council, Pat Crombie, Northern Mining Council Chapter of Western Mining Council, Barney Green, Los Angeles County Chapter Western Mining Council, Robert Sanders, Tuolumne Chapter Western Mining Council, Emmett Dahl, Santa Clara County Chapter Western

Mining Council, Ron Reeves, Mariposa County Chapter Western Mining Council, Arne Soares, Rand-El Paso Mountains Chapter Western Mining Council, Keith O'Hara, Doris Dietemann.

James G. Watt, the successor to the original defendant Cecil Andrus, as Secretary of the Interior, is named per Fed. R. App. P. 43.

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OPINIONS BELOW

(Reproduced in the Appendix hereto)

The Opinion of the United States Court of Appeals for the Ninth Circuit in Case No. 78-2668 is reported in 643 F2d 618. It is set out A-66 to A-84.

The Order of the Honorable Philip C. Wilkins, United States District Judge, dismissing plaintiffs' Complaint is set out at A-64. It is unreported.

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JURISDICTION

This petition for writ of certiorari is timely filed within 90 days from April 23, 1981, when the United States Court of Appeals for the Ninth Circuit entered its decision affirming the District Court's judgment dismissing plaintiffs' Complaint with prejudice.

The statutory provision believed to confer jurisdiction on this Honorable Court is 28 U.S.C. Section 1254.

CONSTITUTIONAL PROVISIONS AND STATUTE AND REGULATION INVOLVED

(In pertinent part)

Constitution of the United States, Article I, Section 8 Powers of Congress: Clause 12:

> "The Congress shall have Power To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years; "

Article IV, Section 3...

> "...The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States..."

Amendment IV

"Security from unreasonable searches and seizures. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Amendment V

"No person shall* * * be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Amendment VI

"Rights of accused in criminal prosecutions. In all criminal prosecutions, the accused shall enjoy the right... to be informed of the nature and cause of the accusation..."

Article IV, Section 3:

"* * * The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States..."

30 U.S.C. Sec. 22 Lands open to purchase by citizens.

"Except as otherwise provided, all valuable mineral deposits in lands

belonging to the United States, both surveyed and unsurveyed, shall be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase by citizens of the United States..."

30 U.S.C. Sec. 26 Locators' rights of possession and enjoyment.

"The locators of all mining locations made on any mineral vein, lode, or ledge...so long as they comply with the laws of the United States, and with State, territorial and local regulations not in conflict with the laws of the United States governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations.

30 U.S.C. Sec. 35 Placer claims

"Claims usually called "placers", including all forms of deposit excepting veins of quartz, or other rock in place, shall be subject to entry and patent, under like circumstances and conditions, and upon similar proceedings, as are provided for vein or lode claims.

30 U.S.C. Sec. 612 Unpatented mining claims - Prospecting, mining or processing operations...

"(b) Rights under any mining claim hereafter located under the mining laws of the United States shall be subject, prior to issuance of patent therefor, to the right of the United States to

manage and dispose of the vegetative surface resources thereof and to manage other surface resources thereof (except mineral deposits subject to location under the mining laws of the United States)...Provided however, That any use of the surface of any such mining claim by the United States, its permittees or licensees, shall be such as not to endanger or materially interfere with prospecting, mining or processing operations or uses reasonably incident thereto...."

28 U.S.C. §2201 Declaratory Judgments Act

"In a case of actual controversy within its jurisdiction, except with respect to Federal Taxes...any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such."

The text of the Federal Land Policy and Management Act of 1976, Public Law 94-579, 94th Congress, 90 Stat. 2743, 43 U.S.C. §1701 et seq. is set forth in full in the Appendix A-11 to A-62.

The pertinent portion 43 CFR §3833.5, (d) and (e) is set forth at A-63.

STATEMENT OF THE CASE

The Western Mining Council, a non-profit association of miners and owners of unpatented mining claims, several of its chapters, and several individuals who mine and own unpatented mining claims filed their complaint seeking a declaratory judgment declaring unconstitutional certain sections of the Federal Land Policy and Management Act of 1976 (FLPMA) 43 USC 1701 et seq. against the Secretary of the Interior of the United States, charged with administration of the Act. A-1to A-10.

The United States District Court for the Eastern District of California denied defendant's motion to dismiss plaintiff's complaint for lack of subject matter jurisdiction under Rule 12(b)(1) Federal Rules of Civil Procedure, but granted defendant's motion to dismiss under Rule 12(b)(6) for failure to state a "justiciable claim". A-64.

Plaintiffs could not appeal from the favorable ruling of the District Court that the court had subject matter jurisdiction. This ruling necessarily included determination that the challenges to consitutionality of the Act presented a "case or controversy" under Article III, Sec. 2 of the Constitution.

Plaintiffs did appeal from the adverse ruling under Rule 12(b)(6) that they had failed to allege a claim for declaratory relief. This presented an issue of "standing" and "ripeness", whether plaintiffs themselves are entitled to challenge the Act as it affects their pursuit of mining their unpatented mining claims.

The Court of Appeals for the Ninth Circuit could properly, on its own motion, determine jurisdiction, whether a justiciable controversy was presented. The issue before the appellate court was whether

justiciable constitutional issues were stated, not to pass on the merits of the constitutional issues raised. Thus the plaintiffs were prejudiced and denied their day in court on the merits of their case.

The U.S. Court of Appeals for the Ninth Circuit had jurisdiction under 28 USC 1291.

In paragraph I of the Complaint the plaintiffs alleged jurisdiction of the U.S. District court. A-1.

In paragraph II, plaintiffs allege the direct personal interest in the controversy which gives them standing. They are owners of their mining claims, hold their perfected claims under contract with the United States under the mining law. They are in a dilemma:

> "4....If they mine their claims and do their assessment work on them, they run the risk of severe sanctions, including imprisonment under

> the Federal Land Policy and Management Act of 1976, 90 Stat. 2843, as interpreted by defendant. If plaintiffs do not mine their claims or do their assessment work required by the mining law, they run the risk of losing their claims for failure to comply with their contracts with the Government to earn the right to purchase their claims and obtain patent to them. A-2
>
> * * * *
>
> "7. Plaintiffs have been deprived of their freedom to engage in the lawful business of mining their claims under penalty of being subject to search without warrant, arrest without warrant, and fine or imprisonment, or both, for violation of orders made by low-level authorized personnel." A-3

In Paragraph III, plaintiffs allege that the defendant "is engaged in the enforcement" of the challenged provisions of the Act. A-3

In Paragraph IV, plaintiffs allege "Nature of the case for declaratory relief", the unconstitutionality of the challenged sections of the Act. Plaintiffs challenge specifically 43 USC Secs. 1701(a)(1), (13) (Sec. 102 (a)(1),(13) set out A-12 and A-13; 43 USC 1732 (b)

Sec. 302(b) of the Act, set out A-30 to A-31; 43 USC 1733 (a), (c), (e), (g) Sec. 303(a),(c),(e),(g), set out A-31 to A-32; 43 USC Sec.1734(b) (Sec. 304(b) of the Act set out A-33; 43 USC 1735(a) (Sec. 305(a) of the Act set out A-33; 43 USC 1740 (Sec. 310 of the Act set out A-35 to A-36; 43 USC 1744 (Sec 314 of the Act set out A-37; 43 USC 1761 -1764 (Secs 501 to 504 of the Act set out A-44 to A-48; and 43 USC 1781(f) (Sec. 601(f) of the Act set out A-52.

Plaintiff miners have a personal stake in the outcome of the controversy; they are asserting a present injury to their own legal rights which are threatened by the challenged provisions. 43 USC 1732(b) Sec 302(b) of the Act (A-31) specifically amends the Mining Law of 1872 and impairs the rights of locators of claims by the last sentence:

> "In managing the public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands." (underscoring added).

That command makes plaintiff miners the target group of the sections of the Act which enlarge the scope of the Secretary's authority to manage and control the "use, occupancy or development" of the public lands.

As is shown in Paragraphs 15 and 20 through 26 of the Complaint (A-5, A-7, A-8) 43 USC 1732(b)(Sec 302(b) of the Act) must be read in connection with Sections 1740 and 1733 of Title 43 (Secs 310 and 303 of the Act A-35 and A-31). These sections not only authorize the defendant to promulgate rules and regulations for the management, use and protection of public lands, but also authorize defendant to administer the lands prior to the promulgation of such rules and regulations under existing rules and regulations "to the extent practical."

The "or otherwise" and "any action necessary" authorization, supplemented by Sections 302(b), 310 and 303 of the Act, empower and direct the Secretary, and his subordinates to whom he may delegate authority without restriction, to act even in the absence of promulgated regulations. They are authorized to invoke either civil or criminal sanctions against plaintiffs for conducting the digging in the ground which is an indispensable part of the "prospecting and mining" activities and "uses reasonably incident thereto" authorized by the mining law, 30 USC Sec. 612. Plaintiffs must necessarily engage in such digging when conducting the annual work, without which they will conclusively be deemed to have abandoned their claims under Sec. 314 of the Act, 43 USC 1744(c).

Paragraph 6 of the Complaint (A-3) alleges the position taken by the Secretary

that plaintiffs cannot dig in the ground. "To do so, defendant says, scars the earth, destroys insects, diminshes animal and plant life, upsets the delicate ecosystem of nature. Digging is an 'unnecessary or undue degradation of the lands'. We can stop you from mining if you dig in the ground."

The Western Mining Council and its chapters also have a direct stake in the controversy, for they allege that their existence depends upon the ability of their members to pay dues. It is well established that a trade association has standing to represent the interests of its members who are threatened in the conduct of their day-to-day business by legislation which is challenged as being unconstitutional on its face. Abbott Laboratories v. Gardner, 387 U.S. 136 (1966).

REASONS FOR GRANTING THE WRIT

There is a direct conflict between the decision of the Court of Appeals for which review is being sought and decisions of the Supreme Court of the United States.

The decision below held that plaintiffs lack standing for failure to allege threatened or actual injury . This is a direct conflict with Doe v. Bolton, 410 U.S. 179 (1973) which holds that the physician-appellants need not be "threatened or prosecuted" to have standing to challenge the constitutionality of legislation which restricted their opportunity to practice and thus gave rise to a "case or controversy" Article III, Sec. 2 of the Constitution of the United States.

In the physicians' case and here in the miners' case, criminal statutes were involved. In Bolton, an anti-abortion statute interfered with the doctors' following

a gainful occupation. The Court said

> "We conclude, however, that the physician-appellants, who are Georgia-licensed doctors consulted by pregnant women, also present a justiciable controversy and do have standing despite the fact that the record does not disclose that any one of them has been prosecuted, or threatened with prosecution, for violation of the State's abortion statutes. The physician is the one against whom these criminal statutes directly operate in the event he procures an abortion that does not meet the statutory exceptions and conditions. The physician-appellants, therefore, assert a sufficiently direct threat of personal detriment. They should not be required to await and undergo a criminal prosecution as the sole means of seeking relief. Crossen v. Breckenridge, 446 F2d 833, 839-840 (CA 6 1971); Poe v.Menghini, 339 F Supp 986, 990-991 (Kan. 1972)." 410 U.S. at page 188.

This Honorable Court cited with approval Crossen v. Breckenridge. The Crossen court said:

> "Nor do we think that the Constitution requires litigants to subject themselves to the possible harm of a criminal prosecution before seeking relief from an allegedly unconstitutional statute, when actual inter-

ference with protected rights is alleged or shown." 446 F2d 839-840.

In reaching its decision in Doe v.Bolton, the Supreme Court stressed the fact that the Georgia abortion statute had only recently been enacted as evidence that the action presented a real controversy, even though no one had been prosecuted or threatened with prosecution. Here, plaintiffs filed their complaint in 1977 challenging the constitutionality of the Act of October 21, 1976.

The insistence upon a direct threat of prosecution having been made to plaintiff, as was required in United Public Workers v. Mitchell, 330 U.S. 75, 89 (1947) has been abandoned. In 1970, Professor Kenneth Culp Davis observed in his Administrative Law Treatise that not a single decision since 1958 had adopted the same attitude toward standing and ripeness as Mitchell. To insist upon plaintiffs' already having run afoul of a statute before they can challenge its constitutionality

would destry the usefulness of the Declaratory Judgment Act as a device to enable parties to avoid having to violate or purport to violate a statute in order to obtain a judicial determination of its meaning or validity, as Congress intended the act should be. Davis, Administrative Law Treatise Sec 21.00 at 670, Supp. 1970. See Senate Report 1005 73rd Cong. 2d Sess. 2,3 (1934).

There is conflict between U.S. v. Mississippi, 380 U.S. 128(1965), U.S. v. Employing Plasterers' Association of Chicago, 347 U.S. 186 (1954) and the decision of the Court of Appeals for which review is sought. The court below begins its analysis of the plaintiffs' individual claims with the statement that the truth of legal conclusions cast in the form of factual allegations would not be necessarily accepted for purposes of ruling on a 12(b)(6) motion.

In U.S. v. Mississippi, this Honorable Court held : "In considering the correctness of this ruling (dismissal under Rule 12(b)(6)) the allegations of the complaint are to be taken as true..." 380 U.S. at 143. The federal rules do not distinguish between the pleading of facts or legal conclusions so long as the other party is given notice of the claim. In United States v. Employing Plasterers Association of Chicago, supra, the Supreme Court of the United States ruled similarly. In that case, where the district court had dismissed the complaint for failure to state a cause of action, the Court said:

> "The complaint plainly charged several times that the effect of all these local restraints was to restrain interstate commerce. Whether these charges be called 'allegations of fact" or "mere conclusions of the pleader", we hold that they must be taken into account in deciding whether the Government is entitled to have its case tried. 347 U.S. at 188-189.

* * * *

> "If a party needs more facts, it has a right to call for them under Rule 12(e) of the Federal Rules of Civil Procedure 28 USCA. And any time a claim is frivolous an expensive full dress trial can be avoided by invoking the summary judgment procedure under Rule 56." Id at 189.

Standing here does not depend entirely upon danger of criminal prosecution. We are guided by the Supreme Court decision of Abbott Laboratories v. Gardner, 387 U. S. 136 (1967). In Abbott Laboratories, this Court found that plaintiffs had standing to sue prior to enforcement of the challenged regulation because it was directed at their business as drug companies.

> "Where a regulation requires an immediate and significant change in plaintiffs' conduct of their affairs with serious penalties attached to noncomplaince, access to the courts under the Administrative Procedure Act and the Declaratory Judgment Act must be permitted, absent a statutory bar or some other unusual circumstance, neither of which appears here." 387 U.S. at 153.

The "legal interest test goes to the merits. The question of 'standing' is different. It concerns, apart from the 'case or controversy' test the question whether the interest sought to be protected by the claimant is arguably within the zone of interest to be protected or regulated by the statute or constitutional guarantee in question." Data Processing Service v. Camp, 397 U.S.150, 153 (1969)

Here, the right involved "is a legal right,--one of property, one arising out of contract, one founded on a statute which confers" a property right. Plaintiffs as the owners of mining claims acquired vested rights to their property under 30 USC Sec 22 Lands Open to Purchase by Citizens, and under 30 USC Sec. 26 Locators' Rights of Possession and Enjoyment, pp. 8 and 9 supra. Sec. 302 (b) of the Act, 43 USC 1732(b) amends the Mining Law. As to plaintiffs' claims lo-

cated prior to October 21, 1976, FLPMA retroactively changed plaintiffs' ownership from a matter of right to a matter of grace in the absolute discretion of an authorized officer. Plaintiffs allege additional conditions imposed upon their contracts with the United States A-4. Plaintiffs have standing to protect their vested interests in mining claims owned by them against dimunition of their rights to property caused by enactment of FLPMA. Plaintiffs' position is supported by Data Processing Service, supra, 397 U.S. at 153. See also FCC v. Sanders Bros. Radio Station, 300 U.S. 47.

Plaintiffs' petition should be granted. This case is of great importance to a large number of citizens. Not only the plaintiffs parties to this action, but the other members of the plaintiff trade

associations and all owners of unpatented mining claims are affected by the challenged provisions of FLPMA.

There are economic reasons of national importance why the writ of certiorari should be granted here.

A recent executive order designed to free the mining industry from excessive bureaucratic regulation shows the concern of the Administration for domestic production of metals. The critical shortage of strategic minerals is a threat to our national defense. It is the individual miner or small company who produce over 80% of all the gold, platinum, cobalt, nickel, chrome and other strategic minerals mined in the State of California.

> "On any given day in this country, according to defense analyst William Schneider, Jr., of the Hudson Institute, the equivalent of three of the Air Force's 26 fighter wings are grounded for a lack of spare parts. 'On the F-15, for example,' he notes, 'there's a serious shortage of critical high-temperature

> engine core parts due to a lack of cobalt.'
>
> The United States is also dependent upon the platinum group of metals and chromium for many industrial products. These minerals are found in the Soviet Union and South Africa, a nation beset by racial problems and increasing African guerrilla pressures and terrorist attacks. Should our supplies of these vital materials from South Africa be cut off, we would experience a sharp drop in our standard of living, which could eventually threaten the entire Western world." Fred Warshofsky, "Strategic Minerals - The Invisible War" in Reader's Digest February 1981.

Richard Arbo, one of the plaintiffs here, sought a declaratory judgment before he was prosecuted and convicted of violation of a regulation or order under FLPMA. His bail was set at $100,000 at the request of the agency. Since filing a notice of appeal to the U.S. Court of Appeals for the Ninth Circuit from the judgment rendered in the U.S. District Court for the Eastern District of California, he has been free on his own recognizance. A number of other members

of the trade association are facing similar charges for violation of agency regulations or orders. Economy of judicial time would be served by granting certiorari in the present case. The constitutionality of the challenged provisions of FLPMA should be tested before cases arising under it proliferate. Plaintiffs should be permitted to have trial on the merits.

CONCLUSION

For the foregoing reasons, petitioners pray that a writ of certiorari be granted.

July 20, 1981.

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UNITED STATES DISTRICT COURT
For the Eastern District of California

Western Mining Council, a corporation, Robert G. Wright, Cal-Ore Chapter, Western Mining council, Barney McClendon, Jr., Nor-Cal Chapter, Western Mining Council, Richard Arbo, Hayfork Chapter, Western Mining Council, Larry Cordtz, Prospectors & Miners Chapter of Shasta County, Western Mining Council, Carl Ripatte, Mother Lode Miners Association, Chapter of Western Mining Council, Barney Green, Los Angeles County Chapter, Western Mining Council, Robert Sanders, Tuolumne Chapter, Western Mining Council, Emmett Dahl, Santa Clara County Chapter, Western Mining Council, Ron Reeves, Mariposa County Chapter, Western Mining Council, Arne Soares, Rand-El Paso Mountains Chapter, Western Mining Council, Keith O'Hara, Doris Dietemann,

Plaintiffs,

v.

CECIL ANDRUS, Secretary of the Interior of the United States of America,

Defendant.

CIVIL S-77-579 PCW Filed Nov. 2, 1977.

COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiffs allege:

I

JURISDICTION AND VENUE

1. Jurisdiction of this honorable Court is invoked under 28 USC §1331(a),

28 USC §2201, 28 USC §1361. Venue is proper under 28 USC §1391(e).

II

THE PLAINTIFFS

2. The individual plaintiffs are citizens and taxpayers of the United States and of the State of California. They are owners of unpatented mining claims or interests therein within the State of California.

3. The Western Mining Council, a California corporation, and the several chapters of the Western Mining Council which are named as parties herein are non-profit trade associations whose members are miners and owners of unpatented mining claims and interests therein. These trade associations derive their revenue from membership dues. The ability of the members of the trade associations to pay dues is being impaired by provisions of the statute which is the subject of this action. The effectiveness of the Western Mining Council and its chapters, and their continued existence as trade associations, are jeopardized by this statute which plaintiffs allege to be unconstitutional.

4. Plaintiffs are in a dilemma. If they mine their claims and do their assessment work on them, they run the risk of severe sanctions, including imprisonment under the Federal Land Policy and Management Act of 1976, 90 Stat. 2843, as interpreted by defendant. If plaintiffs do not mine their claims or do their assessment work required by the mining law, they run the risk of losing their claims for failure to comply with their contracts with the Government to earn the right to purchase their claims and obtain patent to them.

5. The United States of America entered into contracts with plaintiffs whereby the Government agreed, upon plaintiffs' performance of conditions on their part, to sell to plaintiffs at an agreed price the legal title held in trust by the United States for plaintiffs. Plaintiffs are equitable owners of their mining claims.

6. Location of plaintiffs' mining claims has segregated land from the public domain under the mining law. Defendant says on the one hand that the agency he heads encourages plaintiffs to mine, but on the other hand, defendant says plaintiffs cannot dig in the ground. To do so, defendant says, scars the earth, destroys insects, diminishes animal and plant life, upsets the delicate ecosystem of nature. Digging is an "unnecessary or undue degradation of the lands". We can stop you from mining if you dig in the ground.

7. Plaintiffs have been deprived of their freedom to engage in the lawful business of mining their claims under penalty of being subject to search without warrant, arrest without warrant, and fine or imprisonment or both for violation of orders made by low level authorized personnel.

III

THE DEFENDANT

8. Cecil Andrus is the duly appointed, qualified and acting Secretary of the Department of the Interior of the United States of America. He is engaged in enforcement through the agency of the Bureau of Land Managment of the provisions of the Act of October 21, 1976.

NATURE OF THE CASE FOR DECLARATORY RELIEF

9. Plaintiffs seek a declaratory judgment declaring that the Federal Land Policy and Management Act of 1976, 90 Stat. 2743, is unconstitutional in the particulars alleged.

10. The "Due Process" clause of the Fifth Amendment is a limitation against abuse of the police power by the federal government. This limitation against unreasonable, arbitrary and unrestrained action restricts the power of the government no matter by what organ it acts.

11. The Sixth Amendment makes unconstitutional vague criminal statutes. The 1976 Act is a criminal statute and is vague in the particulars alleged herein.

12. The Fourth Amendment prohibits unreasonable searches and seizures without a warrant supported by oath describing the place to be searched and the persons and things to be seized. The 1976 Act allowing searches and seizures without warrant is unconstitutional.

13. The Equality of States doctrine under Article IV, Section 3, commands that all states shall be dealt with equally by the federal government. The original states reserved title to all public lands within their boundaries. There are no federal public domain lands in Texas or Hawaii. In the majority of the public land states, the federal government disposed of substantially all public domain lands so that they could be placed on the tax rolls. California is only half a state, for the federal government has created on the public

domain lands a Federal empire which is governed by wholly autonomous agencies which are not answerable to the citizens of the state. As a consequence, plaintiffs' taxes are higher by reason of the federal government's restricting the tax base to approximately half of the land in the state.

14. The Federal Land Policy and Management Act of October 21, 1976, as interpreted and enforced by defendant, dishonors and repudiates plaintiffs' contracts with the United States by imposing new burdens and conditions upon plaintiffs retroactively. The 1976 Act prevents plaintiffs from completing the contracts previously entered into when plaintiffs accepted the offer extended to citizens by the Government under the Mining Law of 1972.

15. The 1976 Act affirms the 1872 Mining Law, 30 USC §21 et seq. and the Multiple Use Act, 30 USC §611 et seq. and the Mining and Minerals Policy Act of 1970, 30 USC §21a. But Section 310 of the 1976 Act grants to the defendant absolute discretionary power to accomplish a repeal of those statutes as a practical matter while purporting to implement them. Unfettered discretion is vested in the Secretary to subdelegate to low-level "authorized officers" or others in the field the right to make law on the spot and to enforce it.

16. Section 304 (b) of the 1976 Act authorizes the Secretary to require a deposit for the Secretary's costs of "special studies", a burden not included in plaintiffs' contracts. Noncompliance with the orders which the 1976 Act authorizes the

Secretary to issue through his low-level subdelegates would result under Section 305(a) in forfeiture of a bond or other security plaintiffs may be required to post in an undertermined sum as a condition to being granted permission to dig in the ground on their mining claims.

17. Section 501 through Section 504 of the 1976 Act delegates to the Secretary power to prohibit and divest plaintiffs of their appurtenant ditch rights, roads and rights of ingress and egress and to charge plaintiffs for the use of their own vested property.

18. Section 601 of the 1976 Act designates management areas for special treatment. The Act recites that the California "desert environment is a total ecosystem." This section grants to the Secretary absolute power to prepare and implement a management plan affecting mineral development. Subsection (c) violates plaintiffs' vested rights. Patents called for by plaintiffs' contracts will be burdened with added conditions, which the Secretary has been delegated authority to impose in his absolute discretion.

19. The 1976 Act is unconstitutional insofar as it regulates or is interpreted to regulate retroactively mining claims located before the effective date of the Act, October 21, 1976. The "Due Process" clause prohibits destruction or abrogation of property rights arising out of a contract with the United States. Rights against the United States arising out of contract are protected by the Fifth Amendment.

20. Section 302(b) is unconstitutionally vague, for defendant is author-

ized to take any action "necessary" to prevent "unnecessary" or "undue" "degradation" of the lands. Subdelegates may make orders in the field.

21. Section 310 is unconstitutionally vague. It provides that the Secretary of Agriculture may administer lands in National Forests under existing rules "to the extent practical."

22. Sections 302(b) and 310 must be read in connection with Section 303, which makes the Act a criminal, penal statute. Section 303(g) declares unlawful and prohbi9ts "...the use, occupancy, or development of any portion of the public lands contrary to any regulation of the Secretary or other responsible authority, or contrary to any order issued pursuant to any such regulation."

23. The penalty authorized in Section 303(a) for violation of any regulation issued by the Secretary to implement the provisions of the Act with respect to the management, use and protection of the public lands includes imprisonment up to 12 months, with or without a fine up to $1,000.

24. This means that the defendant or his delegates has a free hand to make criminal any activity which the Secretary may choose to deem "unnecessary or undue degradation of the lands, and such activity is made a crime before the Secretary or his delegate has even described it.

25. The statutory definition of the crime prohibited by Section 303 is so vague and indefinite that the Act violates the right of any citizen who may be accused "to be informed of the nature and cause of

the accusation" secured to him by the Sixth Amendment to the Constitution of the United States, and violates the "Due Process" clause of the Fifth Amendment.

26. Section 303 (c)(1) violates the rights of plaintiffs under the Fourth Amendment to be protected against unreasonable searches and seizures without warrant, based on oath showing probable cause "describing the place to be searched, and the persons or things to be seized."

27. Under Section 303(3) the Secretary has been delegated the authority to create a uniformed armed force, as well as to mobilize local law enforcement personnel and their agents [Section 303 (c)(1)] and to train such armed forces (Section 303 (c)(2)]. The Constitution, Article I, Section 8, limits the power "to raise and support armies" to the Congress. Congress delegated this power to raise, support and train an armed uniformed force to the Secretary of the Interior, his authorized officers and other persons. But the Constitution prohibits appropriations for more than two years for such purposes. Thus the unlimited appropriations in the 1976 Act are unconstitutional.

28. Section 314, Recordation of Mining Claims and Abandonment, is unreasonable and arbitrary and is a confiscatory measure masquerading as a police regulation. Its purpose is to exact agency revenues.

29. Subsection 314 (c) unreasonably and unfairly subjects to forfeiture of their property citizens who have vested rights to mining claims located prior to October 21, 1976.

30. The conclusive presumption of abandonment for failure to make timely duplicate recording with the Bureau of Land Management of location notice, or instrument effecting change of ownership interest, or proof of annual assessment work, is a forfeiture statute without "Due Process".

31. Forfeiture is an unreasonably harsh penalty to impose upon citizens for the trivial shortcoming of tardiness in recording. The double recording of location notices, instruments effecting a change in ownership interests and proof of annual assessment work serves no purpose useful for citizens. The records would not be official title records upon which a citizen could depend. The cost of maintaining those duplicate files in the Bureau and the fees charged for recording are an unnecessary waste of taxpayers' money.

32. Defendant interprets Section 314 as authorizing denial of "Due Process". A mining claimant who has been allowed until October 20, 1979 within which to record his mining claim located prior to October 21, 1976, and who has not yet done so, may be deprived of his mining claim without "Due Process" if he des not become aware of a contest which may be brought against his mining claim without any personal service upon him of a contest complaint. 43 CFR §3833.5(d).

33. As a consequence, Subsection (c) of Section 314 is unconstitutional under the Fifth Amendment to the United States Constitution.

34. The retention policy in Section 102(a)(1) violates the doctrine of the equality of the states, which are entitled to come into the Union on an equal footing in all respects with other states. Article IV, Section 3, Constitution of the United States.

35. Section 102(a)(13) recognizes obligation of the federal government to pay money to the states for the burden created as a result of the immunity of federal lands from state and local taxation. But this dubious unilateral method of evading the compact made with the states upon their admission is unconstitutional and a violation of the doctrine of the equality of states within Article IV, Section 3 of the Constitution.

36. Defendant cannot by his rule making power invalidate plaintiffs' mining claims. Plaintiffs' mining claims cannot be destroyed or determined to be invalid except after notice and hearing in adjudicatory proceedings conducted in accordance with the defendant's own regulations for government contests and in accordance with the Administrative Procedure Act. A trial must precede sanctions.

WHEREFORE, plaintiffs pray for a declaratory judgment declaring the 1976 Act, 90 Stat. 2743, unconstitutional, or in the alternative, declaring unconstitutional each section of said Act alleged to be unconstitutional, and further, that defendant be enjoined from expending for armed forces funds appropriated for longer than a two year period for that use.

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Public Law 94-579
94th Congress

An Act

To establish public land policy; to establish guidelines for its administration; to provide for the management, protection, development, and enhancement of the public lands; and for other purposes.

Oct. 21, 1976
[S. 507]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Federal Land Policy and Management Act of 1976.

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TITLE I—SHORT TITLE, DECLARATION OF POLICY, AND DEFINITIONS

SHORT TITLE

43 USC 1701 note.

SEC. 101. This Act may be cited as the "Federal Land Policy and Management Act of 1976".

DECLARATION OF POLICY

43 USC 1701.

SEC. 102. (a) The Congress declares that it is the policy of the United States that—

(1) the public lands be retained in Federal ownership, unless as a result of the land use planning procedure provided for in this Act, it is determined that disposal of a particular parcel will serve the national interest;

(2) the national interest will be best realized if the public lands and their resources are periodically and systematically inventoried and their present and future use is projected through a land use planning process coordinated with other Federal and State planning efforts;

(3) public lands not previously designated for any specific use and all existing classifications of public lands that were effected by executive action or statute before the date of enactment of this Act be reviewed in accordance with the provisions of this Act;

(4) the Congress exercise its constitutional authority to withdraw or otherwise designate or dedicate Federal lands for specified purposes and that Congress delineate the extent to which the Executive may withdraw lands without legislative action;

(5) in administering public land statutes and exercising discretionary authority granted by them, the Secretary be required to establish comprehensive rules and regulations after considering the views of the general public; and to structure adjudication procedures to assure adequate third party participation, objective administrative review of initial decisions, and expeditious decisionmaking;

(6) judicial review of public land adjudication decisions be provided by law;

(7) goals and objectives be established by law as guidelines for public land use planning, and that management be on the basis

of multiple use and sustained yield unless otherwise specified by law;

(8) the public lands be managed in a manner that will protect the quality of scientific, scenic, historical, ecological, environmental, air and atmospheric, water resource, and archeological values; that, where appropriate, will preserve and protect certain public lands in their natural condition; that will provide food and habitat for fish and wildlife and domestic animals; and that will provide for outdoor recreation and human occupancy and use;

(9) the United States receive fair market value of the use of the public lands and their resources unless otherwise provided for by statute;

(10) uniform procedures for any disposal of public land, acquisition of non-Federal land for public purposes, and the exchange of such lands be established by statute, requiring each disposal, acquisition, and exchange to be consistent with the prescribed mission of the department or agency involved, and reserving to the Congress review of disposals in excess of a specified acreage;

(11) regulations and plans for the protection of public land areas of critical environmental concern be promptly developed;

(12) the public lands be managed in a manner which recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands including implementation of the Mining and Minerals Policy Act of 1970 (84 Stat. 1876, 30 U.S.C. 21a) as it pertains to the public lands; and

(13) the Federal Government should, on a basis equitable to both the Federal and local taxpayer, provide for payments to compensate States and local governments for burdens created as a result of the immunity of Federal lands from State and local taxation.

(b) The policies of this Act shall become effective only as specific statutory authority for their implementation is enacted by this Act or by subsequent legislation and shall then be construed as supplemental to and not in derogation of the purposes for which public lands are administered under other provisions of law.

DEFINITIONS

SEC. 103. Without altering in any way the meaning of the following terms as used in any other statute, whether or not such statute is referred to in, or amended by, this Act, as used in this Act— 43 USC 1702.

(a) The term "areas of critical environmental concern" means areas within the public lands where special management attention is required (when such areas are developed or used or where no development is required) to protect and prevent irreparable damage to important historic, cultural, or scenic values, fish and wildlife resources or other natural systems or processes, or to protect life and safety from natural hazards.

(b) The term "holder" means any State or local governmental entity, individual, partnership, corporation, association, or other business entity receiving or using a right-of-way under title V of this Act.

(c) The term "multiple use" means the management of the public lands and their various resource values so that they are utilized in the combination that will best meet the present and future needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to

provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; the use of some land for less than all of the resources; a combination of balanced and diverse resource uses that takes into account the long-term needs of future generations for renewable and nonrenewable resources, including, but not limited to, recreation, range, timber, minerals, watershed, wildlife and fish, and natural scenic, scientific and historical values; and harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.

(d) The term "public involvement" means the opportunity for participation by affected citizens in rulemaking, decisionmaking, and planning with respect to the public lands, including public meetings or hearings held at locations near the affected lands, or advisory mechanisms, or such other procedures as may be necessary to provide public comment in a particular instance.

(e) The term "public lands" means any land and interest in land owned by the United States within the several States and administered by the Secretary of the Interior through the Bureau of Land Management, without regard to how the United States acquired ownership, except—

(1) lands located on the Outer Continental Shelf; and

(2) lands held for the benefit of Indians, Aleuts, and Eskimos.

(f) The term "right-of-way" includes an easement, lease, permit, or license to occupy, use, or traverse public lands granted for the purpose listed in title V of this Act.

Post, p. 2776.

(g) The term "Secretary", unless specifically designated otherwise, means the Secretary of the Interior.

(h) The term "sustained yield" means the achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the public lands consistent with multiple use.

(i) The term "wilderness" as used in section 603 shall have the same meaning as it does in section 2(c) of the Wilderness Act (78 Stat. 890; 16 U.S.C. 1131-1136).

Post, p. 2785.

(j) The term "withdrawal" means withholding an area of Federal land from settlement, sale, location, or entry, under some or all of the general land laws, for the purpose of limiting activities under those laws in order to maintain other public values in the area or reserving the area for a particular public purpose or program; or transferring jurisdiction over an area of Federal land, other than "property" governed by the Federal Property and Administrative Services Act, as amended (40 U.S.C. 472) from one department, bureau or agency to another department, bureau or agency.

(k) An "allotment management plan" means a document prepared in consultation with the lessees or permittees involved, which applies to livestock operations on the public lands or on lands within National Forests in the eleven contiguous Western States and which:

(1) prescribes the manner in, and extent to, which livestock operations will be conducted in order to meet the multiple-use, sustained-yield, economic and other needs and objectives as determined for the lands by the Secretary concerned; and

(2) describes the type, location, ownership, and general specifications for the range improvements to be installed and maintained on the lands to meet the livestock grazing and other objectives of land management; and

(3) contains such other provisions relating to livestock grazing and other objectives found by the Secretary concerned to be consistent with the provisions of this Act and other applicable law.

(l) The term "principal or major uses" includes, and is limited to, domestic livestock grazing, fish and wildlife development and utilization, mineral exploration and production, rights-of-way, outdoor recreation, and timber production.

(m) The term "department" means a unit of the executive branch of the Federal Government which is headed by a member of the President's Cabinet and the term "agency" means a unit of the executive branch of the Federal Government which is not under the jurisdiction of a head of a department.

(n) The term "Bureau means the Bureau of Land Management.

(o) The term "eleven contiguous Western States" means the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming.

(p) The term "grazing permit and lease" means any document authorizing use of public lands or lands in National Forests in the eleven contiguous western States for the purpose of grazing domestic livestock.

TITLE II—LAND USE PLANNING; LAND ACQUISITION AND DISPOSITION

INVENTORY AND IDENTIFICATION

SEC. 201. (a) The Secretary shall prepare and maintain on a continuing basis an inventory of all public lands and their resource and other values (including, but not limited to, outdoor recreation and scenic values), giving priority to areas of critical environmental concern. This inventory shall be kept current so as to reflect changes in conditions and to identify new and emerging resource and other values. The preparation and maintenance of such inventory or the identification of such areas shall not, of itself, change or prevent change of the management or use of public lands. 43 USC 1711.

(b) As funds and manpower are made available, the Secretary shall ascertain the boundaries of the public lands; provide means of public identification thereof including, where appropriate, signs and maps; and provide State and local governments with data from the inventory for the purpose of planning and regulating the uses of non-Federal lands in proximity of such public lands.

LAND USE PLANNING

SEC. 202. (a) The Secretary shall, with public involvement and consistent with the terms and conditions of this Act, develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands. Land use plans shall be developed for the public lands regardless of whether such lands previously have been classified, withdrawn, set aside, or otherwise designated for one or more uses. 43 USC 1712.

(b) In the development and revision of land use plans, the Secretary of Agriculture shall coordinate land use plans for lands in the National Forest System with the land use planning and management programs of and for Indian tribes by, among other things, considering the policies of approved tribal land resource management programs.

(c) In the development and revision of land use plans, the Secretary shall—

(1) use and observe the principles of multiple use and sustained yield set forth in this and other applicable law;

(2) use a systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences;

(3) give priority to the designation and protection of areas of critical environmental concern;

(4) rely, to the extent it is available, on the inventory of the public lands, their resources, and other values;

(5) consider present and potential uses of the public lands;

(6) consider the relative scarcity of the values involved and the availability of alternative means (including recycling) and sites for realization of those values;

(7) weigh long-term benefits to the public against short-term benefits;

(8) provide for compliance with applicable pollution control laws, including State and Federal air, water, noise, or other pollution standards or implementation plans; and

(9) to the extent consistent with the laws governing the administration of the public lands, coordinate the land use inventory, planning, and management activities of or for such lands with the land use planning and management programs of other Federal departments and agencies and of the States and local governments within which the lands are located, including, but not limited to, the statewide outdoor recreation plans developed under the Act of September 3, 1964 (78 Stat. 897), as amended, and of or for Indian tribes by, among other things, considering the policies of approved State and tribal land resource management programs. In implementing this directive, the Secretary shall, to the extent he finds practical, keep apprised of State, local, and tribal land use plans; assure that consideration is given to those State, local, and tribal plans that are germane in the development of land use plans for public lands; assist in resolving, to the extent practical, inconsistencies between Federal and non-Federal Government plans, and shall provide for meaningful public involvement of State and local government officials, both elected and appointed, in the development of land use programs, land use regulations, and land use decisions for public lands, including early public notice of proposed decisions which may have a significant impact on non-Federal lands. Such officials in each State are authorized to furnish advice to the Secretary with respect to the development and revision of land use plans, land use guidelines, land use rules, and land use regulations for the public lands within such State and with respect to such other land use matters as may be referred to them by him. Land use plans of the Secretary under this section shall be consistent with State and local plans to the maximum extent he finds consistent with Federal law and the purposes of this Act.

16 USC 460*l*-4 note.

(d) Any classification of public lands or any land use plan in effect on the date of enactment of this Act is subject to review in the land use planning process conducted under this section, and all public lands, regardless of classification, are subject to inclusion in any land use plan developed pursuant to this section. The Secretary may modify or terminate any such classification consistent with such land use plans.

(e) The Secretary may issue management decisions to implement

land use plans developed or revised under this section in accordance with the following:

(1) Such decisions, including but not limited to exclusions (that is, total elimination) of one or more of the principal or major uses made by a management decision shall remain subject to reconsideration, modification, and termination through revision by the Secretary or his delegate, under the provisions of this section, of the land use plan involved.

(2) Any management decision or action pursuant to a management decision that excludes (that is, totally eliminates) one or more of the principal or major uses for two or more years with respect to a tract of land of one hundred thousand acres or more shall be reported by the Secretary to the House of Representatives and the Senate. If within ninety days from the giving of such notice (exclusive of days on which either House has adjourned for more than three consecutive days), the Congress adopts a concurrent resolution of nonapproval of the management decision or action, then the management decision or action shall be promptly terminated by the Secretary. If the committee to which a resolution has been referred during the said ninety day period, has not reported it at the end of thirty calendar days after its referral, it shall be in order to either discharge the committee from further consideration of such resolution or to discharge the committee from consideration of any other resolution with respect to the management decision or action. A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported such a resolution), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be made with respect to any other resolution with respect to the same management decision or action. When the committee has reprinted, or has been discharged from further consideration of a resolution, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(3) Withdrawals made pursuant to section 204 of this Act may be used in carrying out management decisions, but public lands shall be removed from or restored to the operation of the Mining Law of 1872, as amended (R.S. 2318–2352; 30 U.S.C. 21 et seq.) or transferred to another department, bureau, or agency only by withdrawal action pursuant to section 204 or other action pursuant to applicable law: *Provided*, That nothing in this section shall prevent a wholly owned Government corporation from acquiring and holding rights as a citizen under the Mining Law of 1872.

(f) The Secretary shall allow an opportunity for public involvement and by regulation shall establish procedures, including public hearings where appropriate, to give Federal, State, and local governments and the public, adequate notice and opportunity to comment

upon and participate in the formulation of plans and programs relating to the management of the public lands.

SALES

43 USC 1713.

SEC. 203. (a) A tract of the public lands (except land in units of the National Wilderness Preservation System, National Wild and Scenic Rivers Systems, and National System of Trails) may be sold under this Act where, as a result of land use planning required under section 202 of this Act, the Secretary determines that the sale of such tract meets the following disposal criteria:

(1) such tract because of its location or other characteristics is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal department or agency; or

(2) such tract was acquired for a specific purpose and the tract is no longer required for that or any other Federal purpose; or

(3) disposal of such tract will serve important public objectives, including but not limited to, expansion of communities and economic development, which cannot be achieved prudently or feasibly on land other than public land and which outweigh other public objectives and values, including, but not limited to, recreation and scenic values, which would be served by maintaining such tract in Federal ownership.

(b) Where the Secretary determines that land to be conveyed under clause (3) of subsection (a) of this section is of agricultural value and is desert in character, such land shall be conveyed either under the sale authority of this section or in accordance with other existing law.

Notice.

(c) Where a tract of the public lands in excess of two thousand five hundred acres has been designated for sale, such sale may be made only after the end of the ninety days (not counting days on which the House of Representatives or the Senate has adjourned for more than three consecutive days) beginning on the day the Secretary has submitted notice of such designation to the Senate and the House of Representatives, and then only if the Congress has not adopted a concurrent resolution stating that such House does not approve of such designation. If the committee to which a resolution has been referred during the said ninety day period, has not reported it at the end of thirty calendar days after its referral, it shall be in order to either discharge the committee from further consideration of such resolution or to discharge the committee from consideration of any other resolution with respect to the designation. A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported such a resolution), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be made with respect to any other resolution with respect to the same designation. When the committee has reprinted, or has been discharged from further consideration of a resolution, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the

consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(d) Sales of public lands shall be made at a price not less than their fair market value as determined by the Secretary.

(e) The Secretary shall determine and establish the size of tracts of public lands to be sold on the basis of the land use capabilities and development requirements of the lands; and, where any such tract which is judged by the Secretary to be chiefly valuable for agriculture is sold, its size shall be no larger than necessary to support a family-sized farm.

(f) Sales of public lands under this section shall be conducted under competitive bidding procedures to be established by the Secretary. However, where the Secretary determines it necessary and proper in order (1) to assure equitable distribution among purchasers of lands, or (2) to recognize equitable considerations or public policies, including but not limited to, a preference to users, he may sell those lands with modified competitive bidding or without competitive bidding. In recognizing public policies, the Secretary shall give consideration to the following potential purchasers:

(1) the State in which the land is located;

(2) the local government entities in such State which are in the vicinity of the land;

(3) adjoining landowners;

(4) individuals; and

(5) any other person.

(g) The Secretary shall accept or reject, in writing, any offer to purchase made through competitive bidding at his invitation no later than thirty days after the receipt of such offer or, in the case of a tract in excess of two thousand five hundred acres, at the end of thirty days after the end of the ninety-day period provided in subsection (c) of this section, whichever is later, unless the offeror waives his right to a decision within such thirty-day period. Prior to the expiration of such periods the Secretary may refuse to accept any offer or may withdraw any land or interest in land from sale under this section when he determines that consummation of the sale would not be consistent with this Act or other applicable law.

WITHDRAWALS

SEC. 204. (a) On and after the effective date of this Act the Secretary is authorized to make, modify, extend, or revoke withdrawals but only in accordance with the provisions and limitations of this section. The Secretary may delegate this withdrawal authority only to individuals in the Office of the Secretary who have been appointed by the President, by and with the advice and consent of the Senate. 43 USC 1714.

(b)(1) Within thirty days of receipt of an application for withdrawal, and whenever he proposes a withdrawal on his own motion, the Secretary shall publish a notice in the Federal Register stating that the application has been submitted for filing or the proposal has been made and the extent to which the land is to be segregated while the application is being considered by the Secretary. Upon publication of such notice the land shall be segregated from the operation of the public land laws to the extent specified in the notice. The segregative effect of the application shall terminate upon (a) rejection of the application by the Secretary, (b) withdrawal of lands by the Secre- Application. Notice, publication in Federal Register.

tary, or (c) the expiration of two years from the date of the notice.

(2) The publication provisions of this subsection are not applicable to withdrawals under subsection (e) hereof.

(c)(1) On and after the dates of approval of this Act a withdrawal aggregating five thousand acres or more may be made (or such a withdrawal or any other withdrawal involving in the aggregate five thousand acres or more which terminates after such date of approval may be extended) only for a period of not more than twenty years by the Secretary on his own motion or upon request by a department or agency head. The Secretary shall notify both Houses of Congress of such a withdrawal no later than its effective date and the withdrawal shall terminate and become ineffective at the end of ninety days (not counting days on which the Senate or the House of Representatives has adjourned for more than three consecutive days) beginning on the day notice of such withdrawal has been submitted to the Senate and the House of Representatives, if the Congress has adopted a concurrent resolution stating that such House does not approve the withdrawal. If the committee to which a resolution has been referred during the said ninety day period, has not reported it at the end of thirty calendar days after its referral, it shall be in order to either discharge the committee from further consideration of such resolution or to discharge the committee from consideration of any other resolution with respect to the Presidential recommendation. A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported such a resolution), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be made with respect to any other resolution with respect to the same Presidential recommendation. When the committee has reprinted, or has been discharged from further consideration of a resolution, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

Notification to Congress.

(2) With the notices required by subsection (c)(1) of this section and within three months after filing the notice under subsection (e) of this section, the Secretary shall furnish to the committees—

(1) a clear explanation of the proposed use of the land involved which led to the withdrawal;

(2) an inventory and evaluation of the current natural resource uses and values of the site and adjacent public and nonpublic land and how it appears they will be affected by the proposed use, including particularly aspects of use that might cause degradation of the environment, and also the economic impact of the change in use on individuals, local communities, and the Nation;

(3) an identification of present users of the land involved, and how they will be affected by the proposed use;

(4) an analysis of the manner in which existing and potential resource uses are incompatible with or in conflict with the proposed use, together with a statement of the provisions to be made for continuation or termination of existing uses, including an economic analysis of such continuation or termination;

(5) an analysis of the manner in which such lands will be used in relation to the specific requirements for the proposed use;

(6) a statement as to whether any suitable alternative sites are available (including cost estimates) for the proposed use or for uses such a withdrawal would displace;

(7) a statement of the consultation which has been or will be had with other Federal departments and agencies, with regional, State, and local government bodies, and with other appropriate individuals and groups;

(8) a statement indicating the effect of the proposed uses, if any, on State and local government interests and the regional economy;

(9) a statement of the expected length of time needed for the withdrawal;

(10) the time and place of hearings and of other public involvement concerning such withdrawal;

(11) the place where the records on the withdrawal can be examined by interested parties; and

(12) a report prepared by a qualified mining engineer, engineering geologist, or geologist which shall include but not be limited to information on: general geology, known mineral deposits, past and present mineral production, mining claims, mineral leases, evaluation of future mineral potential, present and potential market demands.

(d) A withdrawal aggregating less than five thousand acres may be made under this subsection by the Secretary on his own motion or upon request by a department or an agency head—

(1) for such period of time as he deems desirable for a resource use; or

(2) for a period of not more than twenty years for any other use, including but not limited to use for administrative sites, location of facilities, and other proprietary purposes; or

(3) for a period of not more than five years to preserve such tract for a specific use then under consideration by the Congress.

(e) When the Secretary determines, or when the Committee on Interior and Insular Affairs of either the House of Representatives or the Senate notifies the Secretary, that an emergency situation exists and that extraordinary measures must be taken to preserve values that would otherwise be lost, the Secretary notwithstanding the provisions of subsections (c)(1) and (d) of this section, shall immediately make a withdrawal and file notice of such emergency withdrawal with the Committees on Interior and Insular Affairs of the Senate and the House of Representatives. Such emergency withdrawal shall be effective when made but shall last only for a period not to exceed three years and may not be extended except under the provisions of subsection (c)(1) or (d), whichever is applicable, and (b)(1) of this section. The information required in subsection (c)(2) of this subsection shall be furnished the committees within three months after filing such notice.

(f) All withdrawals and extensions thereof, whether made prior to or after approval of this Act, having a specific period shall be reviewed by the Secretary toward the end of the withdrawal period and may be extended or further extended only upon compliance with the provisions of subsection (c)(1) or (d), whichever is applicable, and only if the Secretary determines that the purpose for which the withdrawal was first made requires the extension, and then only for a period no longer than the length of the orginal withdrawal period. The Secretary shall report on such review and extensions to the Committees on Interior and Insular Affairs of the House of Representatives and the Senate.

Report to congressional committees.

(g) All applications for withdrawal pending on the date of approval of this Act shall be processed and adjudicated to conclusion within fifteen years of the date of approval of this Act, in accordance with the provisions of this section. The segregative effect of any application not so processed shall terminate on that date.

Hearing.

(h) All new withdrawals made by the Secretary under this section (except an emergency withdrawal made under subsection (e) of this section) shall be promulgated after an opportunity for a public hearing.

(i) In the case of lands under the administration of any department or agency other than the Department of the Interior, the Secretary shall make, modify, and revoke withdrawals only with the consent of the head of the department or agency concerned, except when the provisions of subsection (e) of this section apply.

(j) The Secretary shall not make, modify, or revoke any withdrawal created by Act of Congress; make a withdrawal which can be made only by Act of Congress; modify or revoke any withdrawal creating national monuments under the Act of June 8, 1906 (34 Stat. 225; 16 U.S.C. 431–433); or modify, or revoke any withdrawal which added lands to the National Wildlife Refuge System prior to the date of approval of this Act or which thereafter adds lands to that System under the terms of this Act. Nothing in this Act is intended to modify or change any provision of the Act of February 27, 1976 (90 Stat. 199; 16 U.S.C. 668dd(a)).

Appropriation authorization.

(k) There is hereby authorized to be appropriated the sum of $10,000,000 for the purpose of processing withdrawal applications pending on the effective date of this Act, to be available until expended.

(l)(1) The Secretary shall, within fifteen years of the date of enactment of this Act, review withdrawals existing on the date of approval of this Act, in the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming of (1) all Federal lands other than withdrawals of the public lands administered by the Bureau of Land Management and of lands which, on the date of approval of this Act, were part of Indian reservations and other Indian holdings, the National Forest System, the National Park System, the National Wildlife Refuge System, other lands administered by the Fish and Wildlife Service or the Secretary through the Fish and Wildlife Service, the National Wild and Scenic Rivers System, and the National System of Trails; and (2) all public lands administered by the Bureau of Land Management and of lands in the National Forest System (except those in wilderness areas, and those areas formally identified as primitive or natural areas or designated as national recreation areas) which closed the lands to appropriation under the Mining Law of 1872 (17 Stat. 91, as amended; 30 U.S.C. 22 et seq.) or to leasing under the Mineral Leasing Act of 1920 (41 Stat. 437, as amended; 30 U.S.C. 181 et seq.).

(2) In the review required by paragraph (1) of this subsection, the Secretary shall determine whether, and for how long, the continuation of the existing withdrawal of the lands would be, in his judgment, consistent with the statutory objectives of the programs for which the lands were dedicated and of the other relevant programs. The Secretary shall report his recommendations to the President, together with statements of concurrence or nonconcurrence submitted by the heads of the departments or agencies which administer the lands. The President shall transmit this report to the President of the Senate and the Speaker of the House of Representatives, together with his recommendations for action by the Secretary, or for legislation. The

Report to President.

Transmittal to Congress.

Secretary may act to terminate withdrawals other than those made by Act of the Congress in accordance with the recommendations of the President unless before the end of ninety days (not counting days on which the Senate and the House of Representatives has adjourned for more than three consecutive days) beginning on the day the report of the President has been submitted to the Senate and the House of Representatives the Congress has adopted a concurrent resolution indicating otherwise. If the committee to which a resolution has been referred during the said ninety day period, has not reported it at the end of thirty calendar days after its referral, it shall be in order to either discharge the committee from further consideration of such resolution or to discharge the committee from consideration of any other resolution with respect to the Presidential recommendation. A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported such a resolution), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be made with respect to any other resolution with respect to the same Presidential recommendation. When the committee has reprinted, or has been discharged from further consideration of a resolution, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(3) There are hereby authorized to be appropriated not more than $10,000,000 for the purpose of paragraph (1) of this subsection to be available until expended to the Secretary and to the heads of other departments and agencies which will be involved. Appropriation authorization.

ACQUISITIONS

SEC. 205. (a) Notwithstanding any other provisions of law, the Secretary, with respect to the public lands and the Secretary of Agriculture, with respect to the acquisition of access over non-Federal lands to units of the National Forest System, are authorized to acquire pursuant to this Act by purchase, exchange, donation, or eminent domain, lands or interests therein: *Provided*, That with respect to the public lands, the Secretary may exercise the power of eminent domain only if necessary to secure access to public lands, and then only if the lands so acquired are confined to as narrow a corridor as is necessary to serve such purpose. Nothing in this subsection shall be construed as expanding or limiting the authority of the Secretary of Agriculture to acquire land by eminent domain within the boundaries of units of the National Forest System. 43 USC 1715.

(b) Acquisitions pursuant to this section shall be consistent with the mission of the department involved and with applicable departmental land-use plans.

(c) Lands and interests in lands acquired by the Secretary pursuant to this section or section 206 shall, upon acceptance of title, become public lands, and, for the administration of public land laws not repealed by this Act, shall remain public lands. If such acquired lands

or interests in lands are located within the exterior boundaries of a grazing district established pursuant to the first section of the Act of June 28, 1934 (48 Stat. 1269, as amended; 43 U.S.C. 315) (commonly known as the "Taylor Grazing Act"), they shall become a part of that district. Lands and interests in lands acquired pursuant to this section which are within boundaries of the National Forest System may be transferred to the Secretary of Agriculture and shall then become National Forest System lands and subject to all the laws, rules, and regulations applicable thereto.

(d) Lands and interests in lands acquired by the Secretary of Agriculture pursuant to this section shall, upon acceptance of title, become National Forest System lands subject to all the laws, rules, and regulations applicable thereto.

EXCHANGES

43 USC 1716.

SEC. 206. (a) A tract of public land or interests therein may be disposed of by exchange by the Secretary under this Act and a tract of land or interests therein within the National Forest System may be disposed of by exchange by the Secretary of Agriculture under applicable law where the Secretary concerned determines that the public interest will be well served by making that exchange: *Provided*, That when considering public interest the Secretary concerned shall give full consideration to better Federal land management and the needs of State and local people, including needs for lands for the economy, community expansion, recreation areas, food, fiber, minerals, and fish and wildlife and the Secretary concerned finds that the values and the objectives which Federal lands or interests to be conveyed may serve if retained in Federal ownership are not more than the values of the non-Federal lands or interests and the public objectives they could serve if acquired.

(b) In exercising the exchange authority granted by subsection (a) or by section 205(a) of this Act, the Secretary may accept title to any non-Federal land or interests therein in exchange for such land, or interests therein which he finds proper for transfer out of Federal ownership and which are located in the same State as the non-Federal land or interest to be acquired. For the purposes of this subsection, unsurveyed school sections which, upon survey by the Secretary, would become State lands, shall be considered as "non-Federal lands". The values of the lands exchanged by the Secretary under this Act and by the Secretary of Agriculture under applicable law relating to lands within the National Forest System either shall be equal, or if they are not equal, the values shall be equalized by the payment of money to the grantor or to the Secretary concerned as the circumstances require so long as payment does not exceed 25 per centum of the total value of the lands or interests transferred out of Federal ownership. The Secretary concerned shall try to reduce the amount of the payment of money to as small an amount as possible.

Non-Federal lands.

(c) Lands acquired by exchange under this section by the Secretary which are within the boundaries of the National Forest System may be transferred to the Secretary of Agriculture and shall then become National Forest System lands and subject to all the laws, rules, and regulations applicable to the National Forest System. Lands acquired by exchange by the Secretary under this section which are within the boundaries of National Park, Wildlife Refuge, Wild and Scenic Rivers, Trails, or any other System established by Act of Congress may be transferred to the appropriate agency head for administration as part of such System and in accordance with the laws, rules, and regulations applicable to such System.

QUALIFIED CONVEYEES

SEC. 207. No tract of land may be disposed of under this Act, whether by sale, exchange, or donation, to any person who is not a citizen of the United States, or in the case of a corporation, is not subject to the laws of any State or of the United States. 43 USC 1717.

CONVEYANCES

SEC. 208. The Secretary shall issue all patents or other documents of conveyance after any disposal authorized by this Act. The Secretary shall insert in any such patent or other document of conveyance he issues, except in the case of land exchanges, for which the provisions of subsection 206(b) of this Act shall apply, such terms, covenants, conditions, and reservations as he deems necessary to insure proper land use and protection of the public interest: *Provided*, That a conveyance of lands by the Secretary, subject to such terms, covenants, conditions, and reservations, shall not exempt the grantee from compliance with applicable Federal or State law or State land use plans: *Provided further*, That the Secretary shall not make conveyances of public lands containing terms and conditions which would, at the time of the conveyance, constitute a violation of any law or regulation pursuant to State and local land use plans, or programs. 43 USC 1718.

RESERVATION AND CONVEYANCE OF MINERALS

SEC. 209. (a) All conveyances of title issued by the Secretary, except those involving land exchanges provided for in section 206, shall reserve to the United States all minerals in the lands, together with the right to prospect for, mine, and remove the minerals under applicable law and such regulations as the Secretary may prescribe, except that if the Secretary makes the findings specified in subsection (b) of this section, the minerals may then be conveyed together with the surface to the prospective surface owner as provided in subsection (b). 43 USC 1719.

(b)(1) The Secretary, after consultation with the appropriate department or agency head, may convey mineral interests owned by the United States where the surface is or will be in non-Federal ownership, regardless of which Federal entity may have administered the surface, if he finds (1) that there are no known mineral values in the land, or (2) that the reservation of the mineral rights in the United States is interfering with or precluding appropriate nonmineral development of the land and that such development is a more beneficial use of the land than mineral development.

(2) Conveyance of mineral interests pursuant to this section shall be made only to the existing or proposed record owner of the surface, upon payment of administrative costs and the fair market value of the interests being conveyed.

(3) Before considering an application for conveyance of mineral interests pursuant to this section—

(i) the Secretary shall require the deposit by the applicant of a sum of money which he deems sufficient to cover administrative costs including, but not limited to, costs of conducting an exploratory program to determine the character of the mineral deposits in the land, evaluating the data obtained under the exploratory program to determine the fair market value of the mineral interests to be conveyed, and preparing and issuing the documents of conveyance: *Provided*, That, if the administrative Administrative costs.

costs exceed the deposit, the applicant shall pay the outstanding amount; and, if the deposit exceeds the administrative costs, the applicant shall be given a credit for or refund of the excess; or

(ii) the applicant, with the consent of the Secretary, shall have conducted, and submitted to the Secretary the results of, such an exploratory program, in accordance with standards promulgated by the Secretary.

(4) Moneys paid to the Secretary for administrative costs pursuant to this subsection shall be paid to the agency which rendered the service and deposited to the appropriation then current.

COORDINATION WITH STATE AND LOCAL GOVERNMENTS

Notification.
43 USC 1720.

SEC. 210. At least sixty days prior to offering for sale or otherwise conveying public lands under this Act, the Secretary shall notify the Governor of the State within which such lands are located and the head of the governing body of any political subdivision of the State having zoning or other land use regulatory jurisdiction in the geographical area within which such lands are located, in order to afford the appropriate body the opportunity to zone or otherwise regulate, or change or amend existing zoning or other regulations concerning the use of such lands prior to such conveyance. The Secretary shall also promptly notify such public officials of the issuance of the patent or other document of conveyance for such lands.

OMITTED LANDS

43 USC 1721.

SEC. 211. OMITTED LANDS.—(a) The Secretary is hereby authorized to convey to States or their political subdivisions under the Recreation and Public Purposes Act (44 Stat. 741 as amended; 43 U.S.C. 869 et seq.), as amended, but without regard to the acreage limitations contained therein, unsurveyed islands determined by the Secretary to be public lands of the United States. The conveyance of any such island may be made without survey: *Provided, however*, That such island may be surveyed at the request of the applicant State or its political subdivision if such State or subdivision donates money or services to the Secretary for such survey, the Secretary accepts such money or services, and such services are conducted pursuant to criteria established by the Director of the Bureau of Land Management. Any such island so surveyed shall not be conveyed without approval of such survey by the Secretary prior to the conveyance.

43 USC 869.

(b)(1) The Secretary is authorized to convey to States and their political subdivisions under the Recreation and Public Purposes Act, but without regard to the acreage limitations contained therein, lands other than islands determined by him after survey to be public lands of the United States erroneously or fraudulently omitted from the original surveys (hereinafter referred to as "omitted lands"). Any such conveyance shall not be made without a survey: *Provided*, That the prospective recipient may donate money or services to the Secretary for the surveying necessary prior to conveyance if the Secretary accepts such money or services, such services are conducted pursuant to criteria established by the Director of the Bureau of Land Management, and such survey is approved by the Secretary prior to the conveyance.

(2) The Secretary is authorized to convey to the occupant of any omitted lands which, after survey, are found to have been occupied and developed for a five-year period prior to January 1, 1975, if the

Secretary determines that such conveyance is in the public interest and will serve objectives which outweigh all public objectives and values which would be served by retaining such lands in Federal ownership. Conveyance under this subparagraph shall be made at not less than the fair market value of the land, as determined by the Secretary, and upon payment in addition of administrative costs, including the cost of making the survey, the cost of appraisal, and the cost of making the conveyance.

(c)(1) No conveyance shall be made pursuant to this section until the relevant State government, local government, and areawide planning agency designated pursuant to section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (80 Stat. 1255, 1262) and/or title IV of the Intergovernmental Cooperation Act of 1968 (82 Stat. 1098, 1103–4) have notified the Secretary as to the consistency of such conveyance with applicable State and local government land use plans and programs. 42 USC 3334. 42 USC 4231.

(2) The provisions of section 210 of this Act shall be applicable to all conveyances under this section.

(d) The final sentence of section 1(c) of the Recreation and Public Purposes Act shall not be applicable to conveyances under this section. 43 USC 869.

(e) No conveyance pursuant to this section shall be used as the basis for determining the baseline between Federal and State ownership, the boundary of any State for purposes of determining the extent of a State's submerged lands or the line of demarcation of Federal jurisdiction, or any similar or related purpose.

(f) The provisions of this section shall not apply to any lands within the National Forest System, defined in the Act of August 17, 1974 (88 Stat. 476; 16 U.S.C. 1601), the National Park System, the National Wildlife Refuge System, and the National Wild and Scenic Rivers System.

(g) Nothing in this section shall supersede the provisions of the Act of December 22, 1928 (45 Stat. 1069; 43 U.S.C. 1068), as amended, and the Act of May 31, 1962 (76 Stat. 89), or any other Act authorizing the sale of specific omitted lands.

RECREATION AND PUBLIC PURPOSES ACT

SEC. 212. The Recreation and Public Purposes Act of 1926 (44 Stat. 741, as amended; 43 U.S.C. 869–4), as amended, is further amended as follows:

(a) The second sentence of subsection (a) of the first section of that Act (43 U.S.C. 869(a)) is amended to read as follows: "Before the land may be disposed of under this Act it must be shown to the satisfaction of the Secretary that the land is to be used for an established or definitely proposed project, that the land involved is not of national significance nor more than is reasonably necessary for the proposed use, and that for proposals of over 640 acres comprehensive land use plans and zoning regulations applicable to the area in which the public lands to be disposed of are located have been adopted by the appropriate State or local authority. The Secretary shall provide an opportunity for participation by affected citizens in disposals under this Act, including public hearings or meetings where he deems it appropriate to provide public comments, and shall hold at least one public meeting on any proposed disposal of more than six hundred forty acres under this Act." Public hearings or meetings.

(b) Subsection (b)(i) of the first section of that Act (43 U.S.C. 869(b)) is amended to read as follows:

"(b) Conveyances made in any one calendar year shall be limited as follows:

"(i) For recreational purposes:

"(A) To any State or the State park agency or any other agency having jurisdiction over the State park system of such State designated by the Governor of that State as its sole representative for acceptance of lands under this provision, hereinafter referred to as the State, or to any political subdivision of such State, six thousand four hundred acres, and such additional acreage as may be needed for small roadside parks and rest sites of not more than ten acres each.

"(B) To any nonprofit corporation or nonprofit association, six hundred and forty acres.

"(C) No more than twenty-five thousand six hundred acres may be conveyed for recreational purposes under this Act in any one State per calendar year. Should any State or political subdivision, however, fail to secure, in any one year, six thousand four hundred acres, not counting lands for small roadside parks and rest sites, conveyances may be made thereafter if pursuant to an application on file with the Secretary of the Interior on or before the last day of said year and to the extent that the conveyance would not have exceeded the limitations of said year.".

(c) Section 2(a) of that Act (43 U.S.C. 869-1) is amended by inserting "or recreational purposes" immediately after "historic-monument purposes".

(d) Section 2(b) of that Act (43 U.S.C. 869-1) is amended by adding ", except that leases of such lands for recreational purposes shall be made without monetary consideration" after the phase "reasonable annual rental".

NATIONAL FOREST TOWNSITES

SEC. 213. The Act of July 31, 1958 (72 Stat. 438, 7 U.S.C. 1012a, 16 U.S.C. 478a), is amended to read as follows: "When the Secretary of Agriculture determines that a tract of National Forest System land in Alaska or in the eleven contiguous Western States is located adjacent to or contiguous to an established community, and that transfer of such land would serve indigenous community objectives that outweigh the public objectives and values which would be served by maintaining such tract in Federal ownership, he may, upon application, set aside and designate as a townsite an area of not to exceed six hundred and forty acres of National Forest System land for any one application. After public notice, and satisfactory showing of need therefor by any county, city, or other local governmental subdivision, the Secretary may offer such area for sale to a governmental subdivision at a price not less than the fair market value thereof: *Provided, however*, That the Secretary may condition conveyances of townsites upon the enactment, maintenance, and enforcement of a valid ordinance which assures any land so conveyed will be controlled by the governmental subdivision so that use of the area will not interfere with the protection, management, and development of adjacent or contiguous National Forest System lands."

Public notice.

UNINTENTIONAL TRESPASS ACT

43 USC 1722.

SEC. 214. (a) Notwithstanding the provisions of the Act of September 26, 1968 (82 Stat. 870; 43 U.S.C. 1431-1435), hereinafter called

the "1968 Act", with respect to applications under the 1968 Act which were pending before the Secretary as of the effective date of this subsection and which he approves for sale under the criteria prescribed by the 1968 Act, he shall give the right of first refusal to those having a preference right under section 2 of the 1968 Act. The Secretary shall offer such lands to such preference right holders at their fair market value (exclusive of any values added to the land by such holders and their predecessors in interest) as determined by the Secretary as of September 26, 1973.

(b) Within three years after the date of approval of this Act, the Secretary shall notify the filers of applications subject to paragraph (a) of this section whether he will offer them the lands applied for and at what price; that is, their fair market value as of September 26, 1973, excluding any value added to the lands by the applicants or their predecessors in interest. He will also notify the President of the Senate and the Speaker of the House of Representatives of the lands which he has determined not to sell pursuant to paragraph (a) of this section and the reasons therefor. With respect to such lands which the Secretary determined not to sell, he shall take no other action to convey those lands or interests in them before the end of ninety days (not counting days on which the House of Representatives or the Senate has adjourned for more than three consecutive days) beginning on the date the Secretary has submitted such notice to the Senate and House of Representatives. If, during that ninety-day period, the Congress adopts a concurrent resolution stating the length of time such suspension of action should continue, he shall continue such suspension for the specified time period. If the committee to which a resolution has been referred during the said ninety-day period, has not reported it at the end of thirty calendar days after its referral, it shall be in order to either discharge the committee from further consideration of such resolution or to discharge the committee from consideration of any other resolution with respect to the suspension of action. A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported such a resolution), and debate thereon shall be limited to not more than one hour, to be divided equally between those favoring and those opposing the resolution. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to. If the motion to discharge is agreed to or disagreed to, the motion may not be made with respect to any other resolution with respect to the same suspension of action. When the committee has reprinted, or has been discharged from further consideration of a resolution, it shall at any time thereafter be in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

Notification.

Notification to Congress.

(c) Within five years after the date of approval of this Act, the Secretary shall complete the processing of all applications filed under the 1968 Act and hold sales covering all lands which he has determined to sell thereunder.

TITLE III—ADMINISTRATION

BLM DIRECTORATE AND FUNCTIONS

43 USC 1731.

SEC. 301. (a) The Bureau of Land Management established by Reorganization Plan Numbered 3, of 1946 (5 U.S.C. App. 519) shall have as its head a Director. Appointments to the position of Director shall hereafter be made by the President, by and with the advice and consent of the Senate. The Director of the Bureau shall have a broad background and substantial experience in public land and natural resource management. He shall carry out such functions and shall perform such duties as the Secretary may prescribe with respect to the management of lands and resources under his jurisdiction according to the applicable provisions of this Act and any other applicable law.

(b) Subject to the discretion granted to him by Reorganization Plan Numbered 3 of 1950 (43 U.S.C. 1451 note), the Secretary shall carry out through the Bureau all functions, powers, and duties vested in him and relating to the administration of laws which, on the date of enactment of this section, were carried out by him through the Bureau of Land Management established by section 403 of Reorganization Plan Numbered 3 of 1946. The Bureau shall administer such laws according to the provisions thereof existing as of the date of approval of this Act as modified by the provisions of this Act or by subsequent law.

(c) In addition to the Director, there shall be an Associate Director of the Bureau and so many Assistant Directors, and other employees, as may be necessary, who shall be appointed by the Secretary subject to the provisions of title 5, United States Code, governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter 3 of chapter 53 of such title relating to classification and General Schedule pay rates.

5 USC 101 *et seq.*

5 USC 5101 *et seq.*, 5331.

(d) Nothing in this section shall affect any regulation of the Secretary with respect to the administration of laws administered by him through the Bureau on the date of approval of this section.

MANAGEMENT OF USE, OCCUPANCY, AND DEVELOPMENT

43 USC 1732.

SEC. 302. (a) The Secretary shall manage the public lands under principles of multiple use and sustained yield, in accordance with the land use plans developed by him under section 202 of this Act when they are available, except that where a tract of such public land has been dedicated to specific uses according to any other provisions of law it shall be managed in accordance with such law.

(b) In managing the public lands, the Secretary shall, subject to this Act and other applicable law and under such terms and conditions as are consistent with such law, regulate, through easements, permits, leases, licenses, published rules, or other instruments as the Secretary deems appropriate, the use, occupancy, and development of the public lands, including, but not limited to, long-term leases to permit individuals to utilize public lands for habitation, cultivation, and the development of small trade or manufacturing concerns: *Provided*, That unless otherwise provided for by law, the Secretary may permit Federal departments and agencies to use, occupy, and develop public lands only through rights-of-way under section 507 of this Act, withdrawals under section 204 of this Act, and, where the pro-

posed use and development are similar or closely related to the programs of the Secretary for the public lands involved, cooperative agreements under subsection (b) of section 307 of this Act: *Provided further*, That nothing in this Act shall be construed as authorizing the Secretary concerned to require Federal permits to hunt and fish on public lands or on lands in the National Forest System and adjacent waters or as enlarging or diminishing the responsibility and authority of the States for management of fish and resident wildlife. However, the Secretary concerned may designate areas of public land and of lands in the National Forest System where, and establish periods when, no hunting or fishing will be permitted for reasons of public safety, administration, or compliance with provisions of applicable law. Except in emergencies, any regulations of the Secretary concerned relating to hunting and fishing pursuant to this section shall be put into effect only after consultation with the appropriate State fish and game department. Nothing in this Act shall modify or change any provision of Federal law relating to migratory birds or to endangered or threatened species. Except as provided in section 314, section 603, and subsection (f) of section 601 of this Act and in the last sentence of this paragraph, no provision of this section or any other section of this Act shall in any way amend the Mining Law of 1872 or impair the rights of any locators or claims under that Act, including, but not limited to, rights of ingress and egress. In managing the public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands.

17 Stat. 91.
Regulation.

(c) The Secretary shall insert in any instrument providing for the use, occupancy, or development of the public lands a provision authorizing revocation or suspension, after notice and hearing, of such instrument upon a final administrative finding of a violation of any term or condition of the instrument, including, but not limited to, terms and conditions requiring compliance with regulations under Acts applicable to the public lands and compliance with applicable State or Federal air or water quality standard or implmentation plan: *Provided*, That such violation occurred on public lands covered by such instrument and occurred in connection with the exercise of rights and privileges granted by it: *Provided further*, That the Secretary shall terminate any such suspension no later than the date upon which he determines the cause of said violation has been rectified: *Provided further*, That the Secretary may order an immediate temporary suspension prior to a hearing or final administrative finding if he determines that such a suspension is necessary to protect health or safety or the environment: *Provided further*, That, where other applicable law contains specific provisions for suspension, revocation, or cancellation of a permit, license, or other authorization to use, occupy, or develop the public lands, the specific provisions of such law shall prevail.

ENFORCEMENT AUTHORITY

Regulations.
43 USC 1733.

SEC. 303. (a) The Secretary shall issue regulations necessary to implement the provisions of this Act with respect to the management, use, and protection of the public lands, including the property located thereon. Any person who knowingly and willfully violates any such regulation which is lawfully issued pursuant to this Act shall be fined no more than $1,000 or imprisoned no more than twelve months, or both. Any person charged with a violation of such regulation may be tried and sentenced by any United States magistrate designated for

that purpose by the court by which he was appointed, in the same manner and subject to the same conditions and limitations as provided for in section 3401 of title 18 of the United States Code.

(b) At the request of the Secretary, the Attorney General may institute a civil action in any United States district court for an injunction or other appropriate order to prevent any person from utilizing public lands in violation of regulations issued by the Secretary under this Act.

(c)(1) When the Secretary determines that assistance is necessary in enforcing Federal laws and regulations relating to the public lands or their resources he shall offer a contract to appropriate local officials having law enforcement authority within their respective jurisdictions with the view of achieving maximum feasible reliance upon local law enforcement officials in enforcing such laws and regulations. The Secretary shall negotiate on reasonable terms with such officials who have authority to enter into such contracts to enforce such Federal laws and regulations. In the performance of their duties under such contracts such officials and their agents are authorized to carry firearms; execute and serve any warrant or other process issued by a court or officer of competent jurisdiction; make arrests without warrant or process for a misdemeanor he has reasonable grounds to believe is being committed in his presence or view, or for a felony if he has reasonable grounds to believe that the person to be arrested has committed or is committing such felony; search without warrant or process any person, place, or conveyance according to any Federal law or rule of law; and seize without warrant or process any evidentiary item as provided by Federal law. The Secretary shall provide such law enforcement training as he deems necessary in order to carry out the contracted for responsibilities. While exercising the powers and authorities provided by such contract pursuant to this section, such law enforcement officials and their agents shall have all the immunities of Federal law enforcement officials.

(2) The Secretary may authorize Federal personnel or appropriate local officials to carry out his law enforcement responsibilities with respect to the public lands and their resources. Such designated personnel shall receive the training and have the responsibilities and authority provided for in paragraph (1) of this subsection.

(d) In connection with the administration and regulation of the use and occupancy of the public lands, the Secretary is authorized to cooperate with the regulatory and law enforcement officials of any State or political subdivision thereof in the enforcement of the laws or ordinances of such State or subdivision. Such cooperation may include reimbursement to a State or its subdivision for expenditures incurred by it in connection with activities which assist in the administration and regulation of use and occupancy of the public lands.

(e) Nothing in this section shall prevent the Secretary from promptly establishing a uniformed desert ranger force in the California Desert Conservation Area established pursuant to section 601 of this Act for the purpose of enforcing Federal laws and regulations relating to the public lands and resources managed by him in such area. The officers and members of such ranger force shall have the same responsibilities and authority as provided for in paragraph (1) of subsection (c) of this section.

(f) Nothing in this Act shall be construed as reducing or limiting the enforcement authority vested in the Secretary by any other statute.

(g) The use, occupancy, or development of any portion of the public lands contrary to any regulation of the Secretary or other responsible

authority, or contrary to any order issued pursuant to any such regulation, is unlawful and prohibited.

SERVICE CHARGES, REIMBURSEMENT PAYMENTS, AND EXCESS PAYMENTS

SEC. 304. (a) Notwithstanding any other provision of law, the Secretary may establish reasonable filing and service fees and reasonable charges, and commissions with respect to applications and other documents relating to the public lands and may change and abolish such fees, charges, and commissions. 43 USC 1734.

(b) The Secretary is authorized to require a deposit of any payments intended to reimburse the United States for reasonable costs with respect to applications and other documents relating to such lands. The moneys received for reasonable costs under this subsection shall be deposited with the Treasury in a special account and are hereby authorized to be appropriated and made available until expended. As used in this section "reasonable costs" include, but are not limited to, the costs of special studies; environmental impact statements; monitoring construction, operation, maintenance, and termination of any authorized facility; or other special activities. In determining whether costs are reasonable under this section, the Secretary may take into consideration actual costs (exclusive of management overhead), the monetary value of the rights or privileges sought by the applicant, the efficiency to the government processing involved, that portion of the cost incurred for the benefit of the general public interest rather than for the exclusive benefit of the applicant, the public service provided, and other factors relevant to determining the reasonableness of the costs. "Reasonable costs."

(c) In any case where it shall appear to the satisfaction of the Secretary that any person has made a payment under any statute relating to the sale, lease, use, or other disposition of public lands which is not required or is in excess of the amount required by applicable law and the regulations issued by the Secretary, the Secretary, upon application or otherwise, may cause a refund to be made from applicable funds.

DEPOSITS AND FORFEITURES

SEC. 305. (a) Any moneys received by the United States as a result of the forfeiture of a bond or other security by a resource developer or purchaser or permittee who does not fulfill the requirements of his contract or permit or does not comply with the regulations of the Secretary; or as a result of a compromise or settlement of any claim whether sounding in tort or in contract involving present or potential damage to the public lands shall be credited to a separate account in the Treasury and are hereby authorized to be appropriated and made available, until expended as the Secretary may direct, to cover the cost to the United States of any improvement, protection, or rehabilitation work on those public lands which has been rendered necessary by the action which has led to the forfeiture, compromise, or settlement. 43 USC 1735. Appropriation authorization.

(b) Any moneys collected under this Act in connection with lands administered under the Act of August 28, 1937 (50 Stat. 874; 43 U.S.C. 1181a-1181j), shall be expended for the benefit of such land only.

(c) If any portion of a deposit or amount forfeited under this Act is found by the Secretary to be in excess of the cost of doing the work

authorized under this Act, the Secretary, upon application or otherwise, may cause a refund of the amount in excess to be made from applicable funds.

WORKING CAPITAL FUND

Establishment.
43 USC 1736.

SEC. 306. (a) There is hereby established a working capital fund for the management of the public lands. This fund shall be available without fiscal year limitation for expenses necessary for furnishing, in accordance with the Federal Property and Administrative Services Act of 1949 (63 Stat. 377, as amended), and regulations promulgated thereunder, supplies and equipment services in support of Bureau programs, including but not limited to, the purchase or construction of storage facilities, equipment yards, and related improvements and the purchase, lease, or rent of motor vehicles, aircraft, heavy equipment, and fire control and other resource management equipment within the limitations set forth in appropriations made to the Secretary for the Bureau.

40 USC 471 note.

(b) The initial capital of the fund shall consist of appropriations made for that purpose together with the fair and reasonable value at the fund's inception of the inventories, equipment, receivables, and other assets, less the liabilities, transferred to the fund. The Secretary is authorized to make such subsequent transfers to the fund as he deems appropriate in connection with the functions to be carried on through the fund.

(c) The fund shall be credited with payments from appropriations, and funds of the Bureau, other agencies of the Department of the Interior, other Federal agencies, and other sources, as authorized by law, at rates approximately equal to the cost of furnishing the facilities, supplies, equipment, and services (including depreciation and accrued annual leave). Such payments may be made in advance in connection with firm orders, or by way of reimbursement.

Appropriation authorization.

(d) There is hereby authorized to be appropriated a sum not to exceed $3,000,000 as initial capital of the working capital fund.

STUDIES, COOPERATIVE AGREEMENTS, AND CONTRIBUTIONS

43 USC 1737.

SEC. 307. (a) The Secretary may conduct investigations, studies, and experiments, on his own initiative or in cooperation with others, involving the management, protection, development, acquisition, and conveying of the public lands.

(b) Subject to the provisions of applicable law, the Secretary may enter into contracts and cooperative agreements involving the management, protection, development, and sale of public lands.

(c) The Secretary may accept contributions or donations of money, services, and property, real, personal, or mixed, for the management, protection, development, acquisition, and conveying of the public lands, including the acquisition of rights-of-way for such purposes. He may accept contributions for cadastral surveying performed on federally controlled or intermingled lands. Moneys received hereunder shall be credited to a separate account in the Treasury and are hereby authorized to be appropriated and made available until expended, as the Secretary may direct, for payment of expenses incident to the function toward the administration of which the contributions were made and for refunds to depositors of amounts contributed by them in specific instances where contributions are in excess of their share of the cost.

Appropriation authorization.

CONTRACTS FOR SURVEYS AND RESOURCE PROTECTION

SEC. 308. (a) The Secretary is authorized to enter into contracts for the use of aircraft, and for supplies and services, prior to the passage of an appropriation therefor, for airborne cadastral survey and resource protection operations of the Bureau. He may renew such contracts annually, not more than twice, without additional competition. Such contracts shall obligate funds for the fiscal years in which the costs are incurred. 43 USC 1738.

(b) Each such contract shall provide that the obligation of the United States for the ensuing fiscal years is contingent upon the passage of an applicable appropriation, and that no payment shall be made under the contract for the ensuing fiscal years until such appropriation becomes available for expenditure.

ADVISORY COUNCILS AND PUBLIC PARTICIPATION

SEC. 309. (a) The Secretary is authorized to establish advisory councils of not less than ten and not more than fifteen members appointed by him from among persons who are representative of the various major citizens' interests concerning the problems relating to land use planning or the management of the public lands located within the area for which an advisory council is established. At least one member of each council shall be an elected official of general purpose government serving the people of such area. To the extent practicable there shall be no overlap or duplication of such councils. Appointments shall be made in accordance with rules prescribed by the Secretary. The establishment and operation of an advisory council established under this section shall conform to the requirements of the Federal Advisory Committee Act (86 Stat. 770; 5 U.S.C. App. 1). 43 USC 1739. Rules.

(b) Notwithstanding the provisions of subsection (a) of this section, each advisory council established by the Secretary under this section shall meet at least once a year with such meetings being called by the Secretary.

(c) Members of advisory councils shall serve without pay, except travel and per diem will be paid each member for meetings called by the Secretary.

(d) An advisory council may furnish advice to the Secretary with respect to the land use planning, classification, retention, management, and disposal of the public lands within the area for which the advisory council is established and such other matters as may be referred to it by the Secretary.

(e) In exercising his authorities under this Act, the Secretary, by regulation, shall establish procedures, including public hearings where appropriate, to give the Federal, State, and local governments and the public adequate notice and an opportunity to comment upon the formulation of standards and criteria for, and to participate in, the preparation and execution of plans and programs for, and the management of, the public lands.

RULES AND REGULATIONS

SEC. 310. The Secretary, with respect to the public lands, shall promulgate rules and regulations to carry out the purposes of this Act and of other laws applicable to the public lands, and the Secretary of Agriculture, with respect to lands within the National Forest System, shall promulgate rules and regulations to carry out the purposes of this Act. The promulgation of such rules and regulations shall be 43 USC 1740.

governed by the provisions of chapter 5 of title 5 of the United States Code, without regard to section 553(a)(2). Prior to the promulgation of such rules and regulations, such lands shall be administered under existing rules and regulations concerning such lands to the extent practical.

PUBLIC LANDS PROGRAM REPORT

Submittal to Congress.
43 USC 1741.

SEC. 311. (a) For the purpose of providing information that will aid Congress in carrying out its oversight responsibilities for public lands programs and for other purposes, the Secretary shall prepare a report in accordance with subsections (b) and (c) and submit it to the Congress no later than one hundred and twenty days after the end of each fiscal year beginning with the report for fiscal year 1979.

(b) A list of programs and specific information to be included in the report as well as the format of the report shall be developed by the Secretary after consulting with the Committees on Interior and Insular Affairs of the House and Senate and shall be provided to the committees prior to the end of the second quarter of each fiscal year.

(c) The report shall include, but not be limited to, program identification information, program evaluation information, and program budgetary information for the preceding current and succeeding fiscal years.

SEARCH AND RESCUE

43 USC 1742.

SEC. 312. Where in his judgment sufficient search, rescue, and protection forces are not otherwise available, the Secretary is authorized in cases of emergency to incur such expenses as may be necessary (a) in searching for and rescuing, or in cooperating in the search for and rescue of, persons lost on the public lands, (b) in protecting or rescuing, or in cooperating in the protection and rescue of, persons or animals endangered by an act of God, and (c) in transporting deceased persons or persons seriously ill or injured to the nearest place where interested parties or local authorities are located.

SUNSHINE IN GOVERNMENT

Written statement.
43 USC 1743.

SEC. 313. (a) Each officer or employee of the Secretary and the Bureau who—

(1) performs any function or duty under this Act; and

(2) has any known financial interest in any person who (A) applies for or receives any permit, lease, or right-of-way under, or (B) applies for or acquires any land or interests therein under, or (C) is otherwise subject to the provisions of, this Act,

shall, beginning on February 1, 1977, annually file with the Secretary a written statement concerning all such interests held by such officer or employee during the preceding calendar year. Such statement shall be available to the public.

Public availability.

(b) The Secretary shall—

(1) act within ninety days after the date of enactment of this Act—

(A) to define the term "known financial interests" for the purposes of subsection (a) of this section; and

(B) to establish the methods by which the requirement to file written statements specified in subsection (a) of this section will be monitored and enforced, including appropriate provisions for the filing by such officers and employees of such statements and the review by the Secretary of such statements; and

(2) report to the Congress on June 1 of each calendar year with respect to such disclosures and the actions taken in regard thereto during the preceding calendar year.

(c) In the rules prescribed in subsection (b) of this section, the Secretary may identify specific positions within the Department of the Interior which are of a nonregulatory or nonpolicymaking nature and provide that officers or employees occupying such positions shall be exempt from the requirements of this section.

(d) Any officer or employee who is subject to, and knowingly violates, this section, shall be fined not more than $2,500 or imprisoned not more than one year, or both.

RECORDATION OF MINING CLAIMS AND ABANDONMENT

SEC. 314. (a) The owner of an unpatented lode or placer mining claim located prior to the date of this Act shall, within the three-year period following the date of the approval of this Act and prior to December 31 of each year thereafter, file the instruments required by paragraphs (1) and (2) of this subsection. The owner of an unpatented lode or placer mining claim located after the date of this Act shall, prior to December 31 of each year following the calendar year in which the said claim was located, file the instruments required by paragraphs (1) and (2) of this subsection: 43 USC 1744.

(1) File for record in the office where the location notice or certificate is recorded either a notice of intention to hold the mining claim (including but not limited to such notices as are provided by law to be filed when there has been a suspension or deferment of annual assessment work), an affidavit of assessment work performed thereon, on a detailed report provided by the Act of September 2, 1958 (72 Stat. 1701; 30 U.S.C. 28-1), relating thereto.

(2) File in the office of the Bureau designated by the Secretary a copy of the official record of the instrument filed or recorded pursuant to paragraph (1) of this subsection, including a description of the location of the mining claim sufficient to locate the claimed lands on the ground.

(b) The owner of an unpatented lode or placer mining claim or mill or tunnel site located prior to the date of approval of this Act shall, within the three-year period following the date of approval of this Act, file in the office of the Bureau designated by the Secretary a copy of the official record of the notice of location or certificate of location, including a description of the location of the mining claim or mill or tunnel site sufficient to locate the claimed lands on the ground. The owner of an unpatented lode or placer mining claim or mill or tunnel site located after the date of approval of this Act shall, within ninety days after the date of location of such claim, file in the office of the Bureau designated by the Secretary a copy of the official record of the notice of location or certificate of location, including a description of the location of the mining claim or mill or tunnel site sufficient to locate the claimed lands on the ground.

(c) The failure to file such instruments as required by subsections (a) and (b) shall be deemed conclusively to constitute an abandonment of the mining claim or mill or tunnel site by the owner; but it shall not be considered a failure to file if the instrument is defective or not timely filed for record under other Federal laws permitting filing or recording thereof, or if the instrument is filed for record by or on behalf of some but not all of the owners of the mining claim or mill or tunnel site.

(d) Such recordation or application by itself shall not render valid any claim which would not be otherwise valid under applicable law. Nothing in this section shall be construed as a waiver of the assessment and other requirements of such law.

RECORDABLE DISCLAIMERS OF INTEREST IN LAND

43 USC 1745.

SEC. 315. (a) After consulting with any affected Federal agency, the Secretary is authorized to issue a document of disclaimer of interest or interests in any lands in any form suitable for recordation, where the disclaimer will help remove a cloud on the title of such lands and where he determines (1) a record interest of the United States in lands has terminated by operation of law or is otherwise invalid; or (2) the lands lying between the meander line shown on a plat of survey approved by the Bureau or its predecessors and the actual shoreline of a body of water are not lands of the United States; or (3) accreted, relicted, or avulsed lands are not lands of the United States.

(b) No document or disclaimer shall be issued pursuant to this section unless the applicant therefor has filed with the Secretary an application in writing and notice of such application setting forth the grounds supporting such application has been published in the Federal Register at least ninety days preceding the issuance of such disclaimer and until the applicant therefor has paid to the Secretary the administrative costs of issuing the disclaimer as determined by the Secretary. All receipts shall be deposited to the then-current appropriation from which expended.

(c) Issuance of a document of disclaimer by the Secretary pursuant to the provisions of this section and regulations promulgated hereunder shall have the same effect as a quit-claim deed from the United States.

CORRECTION OF CONVEYANCE DOCUMENTS

43 USC 1746.

SEC. 316. The Secretary may correct patents or documents of conveyance issued pursuant to section 208 of this Act or to other Acts relating to the disposal of public lands where necessary in order to eliminate errors. In addition, the Secretary may make corrections of errors in any documents of conveyance which have heretofore been issued by the Federal Government to dispose of public lands.

MINERAL REVENUES

30 USC 191.

SEC. 317. (a) Section 35 of the Act of February 25, 1920 (41 Stat. 437, 450; 30 U.S.C. 181, 191), as amended, is further amended to read as follows: "All money received from sales, bonuses, royalties, and rentals of the public lands under the provisions of this Act and the Geothermal Steam Act of 1970, notwithstanding the provisions of section 20 thereof, shall be paid into the Treasury of the United States; 50 per centum thereof shall be paid by the Secretary of the Treasury as soon as practicable after March 31 and September 30 of each year to the State other than Alaska within the boundaries of which the leased lands or deposits are or were located; said moneys paid to any of such States on or after January 1, 1976, to be used by such State and its subdivisions, as the legislature of the State may direct giving priority to those subdivisions of the State socially or economically impacted by development of minerals leased under this Act, for (i) planning, (ii) construction and maintenance of public facilities, and (iii) provision of public service; and excepting those

30 USC 1001 note.

from Alaska, 40 per centum thereof shall be paid into, reserved, appropriated, as part of the reclamation fund created by the Act of Congress known as the Reclamation Act, approved June 17, 1902, and of those from Alaska as soon as practicable after March 31 and September 30 of each year, 90 per centum thereof shall be paid to the State of Alaska for disposition by the legislature thereof: *Provided*, That all moneys which may accrue to the United States under the provisions of this Act and the Geothermal Steam Act of 1970 from lands within the naval petroleum reserves shall be deposited in the Treasury as 'miscellaneous receipts', as provided by the Act of June 4, 1920 (41 Stat. 813), as amended June 30, 1938 (52 Stat. 1252). All moneys received under the provisions of this Act and the Geothermal Steam Act of 1970 not otherwise disposed of by this section shall be credited to miscellaneous receipts.". 43 USC 391 note. 30 USC 1001 note.

(b) Funds now held pursuant to said section 35 by the States of Colorado and Utah separately from the Department of the Interior oil shale test leases known as C-A; C-B; U-A and U-B shall be used by such States and subdivisions as the legislature of each State may direct giving priority to those subdivisions socially or economically impacted by the development of minerals leased under this Act for (1) planning, (2) construction and maintenance of public facilities, and (3) provision of public services. 30 USC 191 note.

(c)(1) The Secretary is authorized to make loans to States and their political subdivisions in order to relieve social or economic impacts occasioned by the development of minerals leased in such States pursuant to the Act of February 25, 1920, as amended. Such loans shall be confined to the uses specified for the 50 per centum of mineral revenues to be received by such States and subdivisions pursuant to section 35 of such Act. All loans shall bear interest at a rate not to exceed 3 per centum and shall be for such amounts and durations as the Secretary shall determine. The Secretary shall limit the amounts of such loans to all States except Alaska to the anticipated mineral revenues to be received by the recipients of said loans and to Alaska to 55 per centum of anticipated mineral revenues to be received by it pursuant to said section 35 for any prospective 10-year period. Such loans shall be repaid by the loan recipients from mineral revenues to be derived from said section 35 by such recipients, as the Secretary determines. Loans. 43 USC 1747. Interest rate.

(2) The Secretary, after consultation with Governors of the affected States, shall allocate such loans among the States and their subdivisions in a fair and equitable manner, giving priority to those States and subdivisions suffering the most severe impacts.

(3) Loans under this subsection shall be subject to such terms and conditions as the Secretary determines necessary to assure that the purpose of this subsection will be achieved. The Secretary shall issue such regulations as may be necessary to carry out the provisions of this section. Regulations.

APPROPRIATION AUTHORIZATION

SEC. 318. (a) There are hereby authorized to be appropriated such sums as are necessary to carry out the purposes and provisions of this Act, but no amounts shall be appropriated to carry out after October 1, 1978, any program, function, or activity of the Bureau under this or any other Act unless such sums are specifically authorized to be appropriated as of the date of approval of this Act or are authorized to be appropriated in accordance with the provisions of subsection (b) of this section. 43 USC 1748.

31 USC 1301 note.

(b) Consistent with section 607 of the Congressional Budget Act of 1974, beginning May 15, 1977, and not later than May 15 of each second even numbered year thereafter, the Secretary shall submit to the Speaker of the House of Representatives and the President of the Senate a request for the authorization of appropriations for all programs, functions, and activities of the Bureau to be carried out during the four-fiscal-year period beginning on October 1 of the calendar year following the calendar year in which such request is submitted. The Secretary shall include in his request, in addition to the information contained in his budget request and justification statement to the Office of Management and Budget, the funding levels which he determines can be efficiently and effectively utilized in the execution of his responsibilities for each such program, function, or activity, notwithstanding any budget guidelines or limitations imposed by any official or agency of the executive branch.

(c) Nothing in this section shall apply to the distribution of receipts of the Bureau from the disposal of lands, natural resources, and interests in lands in accordance with applicable law, nor to the use of contributed funds, private deposits for public survey work, and townsite trusteeships, nor to fund allocations from other Federal agencies, reimbursements from both Federal and non-Federal sources, and funds expended for emergency firefighting and rehabilitation.

(d) In exercising the authority to acquire by purchase granted by subsection (a) of section 205 of this Act, the Secretary may use the Land and Water Conservation Fund to purchase lands which are necessary for proper management of public lands which are primarily of value for outdoor recreation purposes.

TITLE IV—RANGE MANAGEMENT

GRAZING FEES

Study. 43 USC 1751.

SEC. 401. (a) The Secretary of Agriculture and the Secretary of the Interior shall jointly cause to be conducted a study to determine the value of grazing on the lands under their jurisdiction in the eleven Western States with a view to establishing a fee to be charged for domestic livestock grazing on such lands which is equitable to the United States and to the holders of grazing permits and leases on such lands. In making such study, the Secretaries shall take into consideration the costs of production normally associated with domestic livestock grazing in the eleven Western States, differences in forage values, and such other factors as may relate to the reasonableness of such fees. The Secretaries shall report the result of such study to the Congress not later than one year from and after the date of approval of this Act, together with recommendations to implement a reasonable grazing fee schedule based upon such study. If the report required herein has not been submitted to the Congress within one year after the date of approval of this Act, the grazing fee charge then in effect shall not be altered and shall remain the same until such report has been submitted to the Congress. Neither Secretary shall increase the grazing fee in the 1977 grazing year.

Report to Congress.

(b)(1) Congress finds that a substantial amount of the Federal range lands is deteriorating in quality, and that installation of additional range improvements could arrest much of the continuing deterioration and could lead to substantial betterment of forage conditions with resulting benefits to wildlife, watershed protection, and livestock production. Congress therefore directs that 50 per centum

of all moneys received by the United States as fees for grazing domestic livestock on public lands (other than from ceded Indian lands) under the Taylor Grazing Act (48 Stat. 1269; 43 U.S.C. 315 et seq.) and the Act of August 28, 1937 (50 Stat. 874; 43 U.S.C. 1181d), and on lands in National Forests in the eleven contiguous Western States under the provisions of this section shall be credited to a separate account in the Treasury, one-half of which is authorized to be appropriated and made available for use in the district, region, or national forest from which such moneys were derived, as the respective Secretary may direct after consultation with district, regional, or national forest user representatives, for the purpose of on-the-ground range rehabilitation, protection, and improvements on such lands, and the remaining one-half shall be used for on-the-ground range rehabilitation, protection, and improvements as the Secretary concerned directs. Any funds so appropriated shall be in addition to any other appropriations made to the respective Secretary for planning and administration of the range betterment program and for other range management. Such rehabilitation, protection, and improvements shall include all forms of range land betterment including, but not limited to, seeding and reseeding, fence construction, weed control, water development, and fish and wildlife habitat enhancement as the respective Secretary may direct after consultation with user representatives. The annual distribution and use of range betterment funds authorized by this paragraph shall not be considered a major Federal action requiring a detailed statement pursuant to section 4332(c) of title 42 of the United States Code.

(2) The first clause of section 10(b) of the Taylor Grazing Act (48 Stat. 1269), as amended by the Act of August 6, 1947 (43 U.S.C. 315i), is hereby repealed. All distributions of moneys made under section 401(b)(1) of this Act shall be in addition to distributions made under section 10 of the Taylor Grazing Act and shall not apply to distribution of moneys made under section 11 of that Act. The remaining moneys received by the United States as fees for grazing domestic livestock on the public lands shall be deposited in the Treasury as miscellaneous receipts. 43 USC 1751. 43 USC 315j.

(3) Section 3 of the Taylor Grazing Act, as amended (43 U.S.C. 315), is further amended by— 43 USC 315b.

(a) Deleting the last clause of the first sentence thereof, which begins with "and in fixing," deleting the comma after "time", and adding to that first sentence the words "in accordance with governing law".

(b) Deleting the second sentence thereof.

GRAZING LEASES AND PERMITS

SEC. 402. (a) Except as provided in subsection (b) of this section, permits and leases for domestic livestock grazing on public lands issued by the Secretary under the Act of June 28, 1934 (48 Stat. 1269, as amended; 43 U.S.C. 315 et seq.) or the Act of August 28, 1937 (50 Stat. 874, as amended; 43 U.S.C. 1181a–1181j), or by the Secretary of Agriculture, with respect to lands within National Forests in the eleven contiguous Western States, shall be for a term of ten years subject to such terms and conditions the Secretary concerned deems appropriate and consistent with the governing law, including, but not limited to, the authority of the Secretary concerned to cancel, suspend, or modify a grazing permit or lease, in whole or in part, pursuant to the terms and conditions thereof, or to cancel or suspend a grazing permit or 43 USC 1752.

lease for any violation of a grazing regulation or of any term or condition of such grazing permit or lease.

(b) Permits or leases may be issued by the Secretary concerned for a period shorter than ten years where the Secretary concerned determines that—

(1) the land is pending disposal; or

(2) the land will be devoted to a public purpose prior to the end of ten years; or

(3) it will be in the best interest of sound land management to specify a shorter term: *Provided*, That the absence from an allotment management plan of details the Secretary concerned would like to include but which are undeveloped shall not be the basis for establishing a term shorter than ten years.

(c) So long as (1) the lands for which the permit or lease is issued remain available for domestic livestock grazing in accordance with land use plans prepared pursuant to section 202 of this Act or section 5 of the Forest and Rangeland Renewable Resources Planning Act of 1974 (88 Stat. 477; 16 U.S.C. 1601), (2) the permittee or lessee is in compliance with the rules and regulations issued and the terms and conditions in the permit or lease specified by the Secretary concerned, and (3) the permittee or lessee accepts the terms and conditions to be included by the Secretary concerned in the new permit or lease, the holder of the expiring permit or lease shall be given first priority for receipt of the new permit or lease.

(d) All permits and leases for domestic livestock grazing issued pursuant to this section, with the exceptions authorized in subsection (e) of this section, on and after October 1, 1988, may incorporate an allotment management plan developed by the Secretary concerned in consultation with the lessees or permittees involved. Prior to that date, allotment management plans shall be incorporated in grazing permits and leases when they are completed. The Secretary concerned may revise such plans from time to time after such consultation.

(e) Prior to October 1, 1988, or thereafter, in all cases where the Secretary concerned has not completed an allotment management plan or determines that an allotment management plan is not necessary for management of livestock operations and will not be prepared, the Secretary concerned shall incorporate in grazing permits and leases such terms and conditions as he deems appropriate for management of the permitted or leased lands pursuant to applicable law. The Secretary concerned shall also specify therein the numbers of animals to be grazed and the seasons of use and that he may reexamine the condition of the range at any time and, if he finds on reexamination that the condition of the range requires adjustment in the amount or other aspect of grazing use, that the permittee or lessee shall adjust his use to the extent the Secretary concerned deems necessary. Such readjustment shall be put into full force and effect on the date specified by the Secretary concerned.

(f) Allotment management plans shall not refer to livestock operations or range improvements on non-Federal lands except where the non-Federal lands are intermingled with, or, with the consent of the permittee or lessee involved, associated with, the Federal lands subject to the plan. The Secretary concerned under appropriate regulations shall grant to lessees and permittees the right of appeal from decisions which specify the terms and conditions of allotment management plans. The preceding sentence of this subsection shall not be construed as limiting any other right of appeal from decisions of such officials.

(g) Whenever a permit or lease for grazing domestic livestock is canceled in whole or in part, in order to devote the lands covered by

the permit or lease to another public purpose, including disposal, the permittee or lessee shall receive from the United States a reasonable compensation for the adjusted value, to be determined by the Secretary concerned, of his interest in authorized permanent improvements placed or constructed by the permittee or lessee on lands covered by such permit or lease, but not to exceed the fair market value of the terminated portion of the permittee's or lessee's interest therein. Except in cases of emergency, no permit or lease shall be canceled under this subsection without two years' prior notification.

(h) Nothing in this Act shall be construed as modifying in any way law existing on the date of approval of this Act with respect to the creation of right, title, interest or estate in or to public lands or lands in National Forests by issuance of grazing permits and leases.

GRAZING ADVISORY BOARDS

SEC. 403. (a) For each Bureau district office and National Forest headquarters office in the eleven contiguous Western States having jurisdiction over more than five hundred thousand acres of lands subject to commercial livestock grazing (hereinafter in this section referred to as "office"), the Secretary and the Secretary of Agriculture, upon the petition of a simple majority of the livestock lessees and permittees under the jurisdiction of such office, shall establish and maintain at least one grazing advisory board of not more than fifteen advisers. 43 USC 1753.

(b) The function of grazing advisory boards established pursuant to this section shall be to offer advice and make recommendations to the head of the office involved concerning the development of allotment management plans and the utilization of range-betterment funds.

(c) The number of advisers on each board and the number of years an adviser may serve shall be determined by the Secretary concerned in his discretion. Each board shall consist of livestock representatives who shall be lessees or permittees in the area administered by the office concerned and shall be chosen by the lessees and permittees in the area through an election prescribed by the Secretary concerned.

(d) Each grazing advisory board shall meet at least once annually.

(e) Except as may be otherwise provided by this section, the provisions of the Federal Advisory Committee Act (86 Stat. 770; 5 U.S.C. App. 1) shall apply to grazing advisory boards.

(f) The provisions of this section shall expire December 31, 1985.

MANAGEMENT OF CERTAIN HORSES AND BURROS

SEC. 404. Sections 9 and 10 of the Act of December 15, 1971 (85 Stat. 649, 651; 16 U.S.C. 1331, 1339–1340) are renumbered as sections 10 and 11, respectively, and the following new section is inserted after section 8:

"SEC. 9. In administering this Act, the Secretary may use or contract for the use of helicopters or, for the purpose of transporting captured animals, motor vehicles. Such use shall be undertaken only after a public hearing and under the direct supervision of the Secretary or of a duly authorized official or employee of the Department. The provisions of subsection (a) of the Act of September 8, 1959 (73 Stat. 470; 18 U.S.C. 47(a)) shall not be applicable to such use. Such use shall be in accordance with humane procedures prescribed by the Secretary.". 16 USC 1338a.

TITLE V—RIGHTS-OF-WAY

AUTHORIZATION TO GRANT RIGHTS-OF-WAY

43 USC 1761.

SEC. 501. (a) The Secretary, with respect to the public lands and, the Secretary of Agriculture, with respect to lands within the National Forest System (except in each case land designated as wilderness), are authorized to grant, issue, or renew rights-of-way over, upon, under, or through such lands for—

(1) reservoirs, canals, ditches, flumes, laterals, pipes, pipelines, tunnels, and other facilities and systems for the impoundment, storage, transportation, or distribution of water;

(2) pipelines and other systems for the transportation or distribution of liquids and gases, other than water and other than oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom, and for storage and terminal facilities in connection therewith;

(3) pipelines, slurry and emulsion systems, and conveyor belts for transportation and distribution of solid materials, and facilities for the storage of such materials in connection therewith;

(4) systems for generation, transmission, and distribution of electric energy, except that the applicant shall also comply with all applicable requirements of the Federal Power Commission under the Federal Power Act of 1935 (49 Stat. 847; 16 U.S.C. 791);

(5) systems for transmission or reception of radio, television, telephone, telegraph, and other electronic signals, and other means of communication;

(6) roads, trails, highways, railroads, canals, tunnels, tramways, airways, livestock driveways, or other means of transportation except where such facilities are constructed and maintained in connection with commercial recreation facilities on lands in the National Forest System; or

(7) such other necessary transportation or other systems or facilities which are in the public interest and which require rights-of-way over, upon, under, or through such lands.

(b)(1) The Secretary concerned shall require, prior to granting, issuing, or renewing a right-of-way, that the applicant submit and disclose those plans, contracts, agreements, or other information reasonably related to the use, or intended use, of the right-of-way, including its effect on competition, which he deems necessary to a determination, in accordance with the provisions of this Act, as to whether a right-of-way shall be granted, issued, or renewed and the terms and conditions which should be included in the right-of-way.

(2) If the applicant is a partnership, corporation, association, or other business entity, the Secretary concerned, prior to granting a right-to-way pursuant to this title, shall require the applicant to disclose the identity of the participants in the entity, when he deems it necessary to a determination, in accordance with the provisions of this title, as to whether a right-of-way shall be granted, issued, or renewed and the terms and conditions which should be included in the right-of-way. Such disclosures shall include, where applicable: (A) the name and address of each partner; (B) the name and address of each shareholder owning 3 per centum or more of the shares, together with the number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote; and (C) the name and address of each affiliate of the entity together with, in the case of an affiliate

controlled by the entity, the number of shares and the percentage of any class of voting stock of that affiliate owned, directly or indirectly, by that entity, and, in the case of an affiliate which controls that entity, the number of shares and the percentage of any class of voting stock of that entity owned, directly or indirectly, by the affiliate.

COST-SHARE ROAD AUTHORIZATION

SEC. 502. (a) The Secretary, with respect to the public lands, is authorized to provide for the acquisition, construction, and maintenance of roads within and near the public lands in locations and according to specifications which will permit maximum economy in harvesting timber from such lands tributary to such roads and at the same time meet the requirements for protection, development, and management of such lands for utilization of the other resources thereof. Financing of such roads may be accomplished (1) by the Secretary utilizing appropriated funds, (2) by requirements on purchasers of timber and other products from the public lands, including provisions for amortization of road costs in contracts, (3) by cooperative financing with other public agencies and with private agencies or persons, or (4) by a combination of these methods: *Provided*, That, where roads of a higher standard than that needed in the harvesting and removal of the timber and other products covered by the particular sale are to be constructed, the purchaser of timber and other products from public lands shall not, except when the provisions of the second proviso of this subsection apply, be required to bear that part of the costs necessary to meet such higher standard, and the Secretary is authorized to make such arrangements to this end as may be appropriate: *Provided further*, That when timber is offered with the condition that the purchaser thereof will build a road or roads in accordance with standards specified in the offer, the purchaser of the timber will be responsible for paying the full costs of construction of such roads.

43 USC 1762.

Financing.

(b) Copies of all instruments affecting permanent interests in land executed pursuant to this section shall be recorded in each county where the lands are located.

(c) The Secretary may require the user or users of a road, trail, land, or other facility administered by him through the Bureau, including purchasers of Government timber and other products, to maintain such facilities in a satisfactory condition commensurate with the particular use requirements of each. Such maintenance to be borne by each user shall be proportionate to total use. The Secretary may also require the user or users of such a facility to reconstruct the same when such reconstruction is determined to be necessary to accommodate such use. If such maintenance or reconstruction cannot be so provided or if the Secretary determines that maintenance or reconstruction by a user would not be practical, then the Secretary may require that sufficient funds be deposited by the user to provide his portion of such total maintenance or reconstruction. Deposits made to cover the maintenance or reconstruction of roads are hereby made available until expended to cover the cost to the United States of accomplishing the purposes for which deposited: *Provided*, That deposits received for work on adjacent and overlapping areas may be combined when it is the most practicable and efficient manner of performing the work, and cost thereof may be determined by estimates: *And provided further*, That unexpended balances upon accomplishment of the purpose for which deposited shall be transferred to miscellaneous receipts or refunded.

Maintenance.

(d) Whenever the agreement under which the United States has obtained for the use of, or in connection with, the public lands a right-

of-way or easement for a road or an existing road or the right to use an existing road provides for delayed payments to the Government's grantor, any fees or other collections received by the Secretary for the use of the road may be placed in a fund to be available for making payments to the grantor.

RIGHT-OF-WAY CORRIDORS

43 USC 1763.

SEC. 503. In order to minimize adverse environmental impacts and the proliferation of separate rights-of-way, the utilization of rights-of-way in common shall be required to the extent practical, and each right-of-way or permit shall reserve to the Secretary concerned the right to grant additional rights-of-way or permits for compatible uses on or adjacent to rights-of-way granted pursuant to this Act. In designating right-of-way corridors and in determining whether to require that rights-of-way be confined to them, the Secretary concerned shall take into consideration national and State land use policies, environmental quality, economic efficiency, national security, safety, and good engineering and technological practices. The Secretary concerned shall issue regulations containing the criteria and procedures he will use in designating such corridors. Any existing transportation and utility corridors may be designated as transportation and utility corridors pursuant to this subsection without further review.

Regulations.

GENERAL PROVISIONS

43 USC 1764.

SEC. 504. (a) The Secretary concerned shall specify the boundaries of each right-of-way as precisely as is practical. Each right-of-way shall be limited to the ground which the Secretary concerned determines (1) will be occupied by facilities which constitute the project for which the right-of-way is granted, issued, or renewed, (2) to be necessary for the operation or maintenance of the project, (3) to be necessary to protect the public safety, and (4) will do no unnecessary damage to the environment. The Secretary concerned may authorize the temporary use of such additional lands as he determines to be reasonably necessary for the construction, operation, maintenance, or termination of the project or a portion thereof, or for access thereto.

Limitation.

(b) Each right-of-way or permit granted, issued, or renewed pursuant to this section shall be limited to a reasonable term in light of all circumstances concerning the project. In determining the duration of a right-of-way the Secretary concerned shall, among other things, take into consideration the cost of the facility, its useful life, and any public purpose it serves. The right-of-way shall specify whether it is or is not renewable and the terms and conditions applicable to the renewal.

(c) Rights-of-way shall be granted, issued, or renewed pursuant to this title under such regulations or stipulations, consistent with the provisions of this title or any other applicable law, and shall also be subject to such terms and conditions as the Secretary concerned may prescribe regarding extent, duration, survey, location, construction, maintenance, transfer or assignment, and termination.

Right-of-way, plan submittal.

(d) The Secretary concerned prior to granting or issuing a right-of-way pursuant to this title for a new project which may have a significant impact on the environment, shall require the applicant to submit a plan of construction, operation, and rehabilitation for such right-of-way which shall comply with stipulations or with regulations issued by that Secretary, including the terms and conditions required under section 505 of this Act.

(e) The Secretary concerned shall issue regulations with respect to the terms and conditions that will be included in rights-of-way pursuant to section 505 of this title. Such regulations shall be regularly revised as needed. Such regulations shall be applicable to every right-of-way granted or issued pursuant to this title and to any subsequent renewal thereof, and may be applicable to rights-of-way not granted or issued, but renewed pursuant to this title. Regulations.

(f) Mineral and vegetative materials, including timber, within or without a right-of-way, may be used or disposed of in connection with construction or other purposes only if authorization to remove or use such materials has been obtained pursuant to applicable laws.

(g) The holder of a right-of-way shall pay annually in advance the fair market value thereof as determined by the Secretary granting, issuing, or renewing such right-of-way: *Provided*, That when the annual rental is less than $100, the Secretary concerned may require advance payment for more than one year at a time: *Provided further*, That the Secretary concerned may waive rentals where a right-of-way is granted, issued, or renewed in reciprocation for a right-of-way conveyed to the United States in connection with a cooperative cost share program between the United States and the holder. The Secretary concerned may, by regulation or prior to promulgation of such regulations, as a condition of a right-of-way, require an applicant for or holder of a right-of-way to reimburse the United States for all reasonable administrative and other costs incurred in processing an application for such right-of-way and in inspection and monitoring of construction, operation, and termination of the facility pursuant to such right-of-way: *Provided, however*, That the Secretary concerned need not secure reimbursement in any situation where there is in existence a cooperative cost share right-of-way program between the United States and the holder of a right-of-way. Rights-of-way may be granted, issued, or renewed to a Federal, State, or local government or any agency or instrumentality thereof, to nonprofit associations or nonprofit corporations which are not themselves controlled or owned by profitmaking corporations or business enterprises, or to a holder where he provides without or at reduced charges a valuable benefit to the public or to the programs of the Secretary concerned, or to a holder in connection with the authorized use or occupancy of Federal land for which the United States is already receiving compensation for such lesser charge, including free use as the Secretary concerned finds equitable and in the public interest. Such rights-of-way issued at less than fair market value are not assignable except with the approval of the Secretary issuing the right-of-way. The moneys received for reimbursement of reasonable costs shall be deposited with the Treasury in a special account and are hereby authorized to be appropriated and made available until expended. Fair market value, annual payment. Waiver. Reimbursement.

(h)(1) The Secretary concerned shall promulgate regulations specifying the extent to which holders of rights-of-way under this title shall be liable to the United States for damage or injury incurred by the United States caused by the use and occupancy of the rights-of-way. The regulations shall also specify the extent to which such holders shall indemnify or hold harmless the United States for liabilities, damages, or claims caused by their use and occupancy of the rights-of-way. Regulations.

(2) Any regulation or stipulation imposing liability without fault shall include a maximum limitation on damages commensurate with the foreseeable risks or hazards presented. Any liability for damage

or injury in excess of this amount shall be determined by ordinary rules of negligence.

(i) Where he deems it appropriate, the Secretary concerned may require a holder of a right-of-way to furnish a bond, or other security, satisfactory to him to secure all or any of the obligations imposed by the terms and conditions of the right-of-way or by any rule or regulation of the Secretary concerned.

(j) The Secretary concerned shall grant, issue, or renew a right of-way under this title only when he is satisfied that the applicant has the technical and financial capability to construct the project for which the right-of-way is requested, and in accord with the requirements of this title.

TERMS AND CONDITIONS

43 USC 1765.

SEC. 505. Each right-of-way shall contain—

(a) terms and conditions which will (i) carry out the purposes of this Act and rules and regulations issued thereunder; (ii) minimize damage to scenic and esthetic values and fish and wildlife habitat and otherwise protect the environment; (iii) require compliance with applicable air and water quality standards established by or pursuant to applicable Federal or State law; and (iv) require compliance with State standards for public health and safety, environmental protection, and siting, construction, operation, and maintenance of or for rights-of-way for similar purposes if those standards are more stringent than applicable Federal standards; and

(b) such terms and conditions as the Secretary concerned deems necessary to (i) protect Federal property and economic interests; (ii) manage efficiently the lands which are subject to the right-of-way or adjacent thereto and protect the other lawful users of the lands adjacent to or traversed by such right-of-way; (iii) protect lives and property; (iv) protect the interests of individuals living in the general area traversed by the right-of-way who rely on the fish, wildlife, and other biotic resources of the area for subsistence purposes; (v) require location of the right-of-way along a route that will cause least damage to the environment, taking into consideration feasibility and other relevant factors; and (vi) otherwise protect the public interest in the lands traversed by the right-of-way or adjacent thereto.

SUSPENSION OR TERMINATION OF RIGHTS-OF-WAY

43 USC 1766.

SEC. 506. Abandonment of a right-of-way or noncompliance with any provision of this title, condition of the right-of-way, or applicable rule or regulation of the Secretary concerned may be grounds for suspension or termination of the right-of-way if, after due notice to the holder of the right-of-way and, and with respect to easements, an appropriate administrative proceeding pursuant to section 554 of title 5 of the United States Code, the Secretary concerned determines that any such ground exists and that suspension or termination is justified. No administrative proceeding shall be required where the right-of-way by its terms provides that it terminates on the occurrence of a fixed or agreed-upon condition, event, or time. If the Secretary concerned determines that an immediate temporary suspension of activities within a right-of-way for violation of its terms and conditions is necessary to protect public health or safety or the environment, he may abate such activities prior to an administrative proceeding. Prior to commencing any proceeding to suspend or terminate a right-of-way

Notice.

the Secretary concerned shall give written notice to the holder of the grounds for such action and shall give the holder a reasonable time to resume use of the right-of-way or to comply with this title, condition, rule, or regulation as the case may be. Failure of the holder of the right-of-way to use the right-of-way for the purpose for which it was granted, issued, or renewed, for any continuous five-year period, shall constitute a rebuttable presumption of abandonment of the right-of-way, except that where the failure of the holder to use the right-of-way for the purpose for which it was granted, issued, or renewed for any continuous five-year period is due to circumstances not within the holder's control, the Secretary concerned is not required to commence proceedings to suspend or terminate the right-of-way.

RIGHTS-OF-WAY FOR FEDERAL AGENCIES

SEC. 507. (a) The Secretary concerned may provide under applicable provisions of this title for the use of any department or agency of the United States a right-of-way over, upon, under or through the land administered by him, subject to such terms and conditions as he may impose. 43 USC 1767.

(b) Where a right-of-way has been reserved for the use of any department or agency of the United States, the Secretary shall take no action to terminate, or otherwise limit, that use without the consent of the head of such department or agency.

CONVEYANCE OF LANDS

SEC. 508. If under applicable law the Secretary concerned decides to transfer out of Federal ownership any lands covered in whole or in part by a right-of-way, including a right-of-way granted under the Act of November 16, 1973 (87 Stat. 576; 30 U.S.C. 185), the lands may be conveyed subject to the right-of-way; however, if the Secretary concerned determines that retention of Federal control over the right-of-way is necessary to assure that the purposes of this title will be carried out, the terms and conditions of the right-of-way complied with, or the lands protected, he shall (a) reserve to the United States that portion of the lands which lies within the boundaries of the right-of-way, or (b) convey the lands, including that portion within the boundaries of the right-of-way, subject to the right-of-way and reserving to the United States the right to enforce all or any of the terms and conditions of the right-of-way, including the right to renew it or extend it upon its termination and to collect rents. 43 USC 1768.

EXISTING RIGHTS-OF WAY

SEC. 509. (a) Nothing in this title shall have the effect of terminating any right-of-way or right-of-use heretofore issued, granted, or permitted. However, with the consent of the holder thereof, the Secretary concerned may cancel such a right-of-way or right-of-use and in its stead issue a right-of-way pursuant to the provisions of this title. 43 USC 1769. Cancellation.

(b) When the Secretary concerned issues a right-of-way under this title for a railroad and appurtenant communication facilities in connection with a realinement of a railroad on lands under his jurisdiction by virtue of a right-of-way granted by the United States, he may, when he considers it to be in the public interest and the lands involved are not within an incorporated community and are of approximately equal value, notwithstanding the provisions of this title, provide in the new right-of-way the same terms and conditions as applied to the por-

tion of the existing right-of-way relinquished to the United States with respect to the payment of annual rental, duration of the right-of-way, and the nature of the interest in lands granted. The Secretary concerned or his delegate shall take final action upon all applications for the grant, issue, or renewal of rights-of-way under subsection (b) of this section no later than six months after receipt from the applicant of all information required from the applicant by this title.

EFFECT ON OTHER LAWS

43 USC 1770.

SEC. 510. (a) Effective on and after the date of approval of this Act, no right-of-way for the purposes listed in this title shall be granted, issued, or renewed over, upon, under, or through such lands except under and subject to the provisions, limitations, and conditions of this title: *Provided*, That nothing in this title shall be construed as affecting or modifying the provisions of the Act of October 13, 1964 (78 Stat. 1089; 16 U.S.C. 532–538) and in the event of conflict with, or inconsistency between, this title and the Act of October 13, 1964, the latter shall prevail: *Provided further*, That nothing in this Act should be construed as making it mandatory that, with respect to forest roads, the Secretary of Agriculture limit rights-of-way grants or their term of years or require disclosure pursuant to Section 501(b) or impose any other condition contemplated by this Act that is contrary to present practices of that Secretary under the Act of October 13, 1964. Any pending application for a right-of-way under any other law on the effective date of this section shall be considered as an application under this title. The Secretary concerned may require the applicant to submit any additional information he deems necessary to comply with the requirements of this title.

(b) Nothing in this title shall be construed to preclude the use of lands covered by this title for highway purposes pursuant to sections 107 and 317 of title 23 of the United States Code.

(c)(1) Nothing in this title shall be construed as exempting any holder of a right-of-way issued under this title from any provision of the antitrust laws of the United States.

"Antitrust law."

(2) For the purposes of this subsection, the term "antitrust laws" includes the Act of July 2, 1890 (26 Stat. 15 U.S.C. 1 et seq.); the Act of October 15, 1914 (38 Stat. 730, 15 U.S.C. 12 et seq.); the Federal Trade Commission Act (38 Stat. 717; 15 U.S.C. 41 et seq.); and sections 73 and 74 of the Act of August 27, 1894.

15 USC 8, 9.

COORDINATION OF APPLICATIONS

43 USC 1771.

SEC. 511. Applicants before Federal departments and agencies other than the Department of the Interior or Agriculture seeking a license, certificate, or other authority for a project which involve a right-of-way over, upon, under, or through public land or National Forest System lands must simultaneously apply to the Secretary concerned for the appropriate authority to use public lands or National Forest System lands and submit to the Secretary concerned all information furnished to the other Federal department or agency.

TITLE VI—DESIGNATED MANAGEMENT AREAS

CALIFORNIA DESERT CONSERVATION AREA

43 USC 1781.

SEC. 601. (a) The Congress finds that—

(1) the California desert contains historical, scenic, archeologi-

cal, environmental, biological, cultural, scientific, educational, recreational, and economic resources that are uniquely located adjacent to an area of large population;

(2) the California desert environment is a total ecosystem that is extremely fragile, easily scarred, and slowly healed;

(3) the California desert environment and its resources, including certain rare and endangered species of wildlife, plants, and fishes, and numerous archeological and historic sites, are seriously threatened by air pollution, inadequate Federal management authority, and pressures of increased use, particularly recreational use, which are certain to intensify because of the rapidly growing population of southern California;

(4) the use of all California desert resources can and should be provided for in a multiple use and sustained yield management plant to conserve these resources for future generations, and to provide present and future use and enjoyment, particularly outdoor recreation uses, including the use, where appropriate, of off-road recreational vehicles;

(5) the Secretary has initiated a comprehensive planning process and established an interim management program for the public lands in the California desert; and

(6) to insure further study of the relationship of man and the California desert environment, preserve the unique and irreplaceable resources, including archeological values, and conserve the use of the economic resources of the California desert, the public must be provided more opportunity to participate in such planning and management, and additional management authority must be provided to the Secretary to facilitate effective implementation of such planning and management.

(b) It is the purpose of this section to provide for the immediate and future protection and administration of the public lands in the California desert within the framework of a program of multiple use and sustained yield, and the maintenance of environmental quality.

"California desert."

(c)(1) For the purpose of this section, the term "California desert" means the area generally depicted on a map entitled "California Desert Conservation Area—Proposed" dated April 1974, and described as provided in subsection (c)(2).

Revised map filed with congressional committees.

(2) As soon as practicable after the date of approval of this Act, the Secretary shall file a revised map and a legal description of the California Desert Conservation Area with the Committees on Interior and Insular Affairs of the United States Senate and the House of Representatives, and such map and description shall have the same force and effect as if included in this Act. Correction of clerical and typographical errors in such legal description and a map may be made by the Secretary. To the extent practicable, the Secretary shall make such legal description and map available to the public promptly upon request.

Ante, p. 2747.

(d) The Secretary, in accordance with section 202 of this Act, shall prepare and implement a comprehensive, long-range plan for the management, use, development, and protection of the public lands within the California Desert Conservation Area. Such plan shall take into account the principles of multiple use and sustained yield in providing for resource use and development, including, but not limited to, maintenance of environmental quality, rights-of-way, and mineral development. Such plan shall be completed and implementation thereof initiated on or before September 30, 1980.

Interim program.

(e) During the period beginning on the date of approval of this Act and ending on the effective date of implementation of the comprehensive, long-range plan, the Secretary shall execute an interim program to manage, use, and protect the public lands, and their resources now in danger of destruction, in the California Desert Conservation Area, to provide for the public use of such lands in an orderly and reasonable manner such as through the development of campgrounds and visitor centers, and to provide for a uniformed desert ranger force.

Mining claims. Regulations.

(f) Subject to valid existing rights, nothing in this Act shall affect the applicability of the United States mining laws on the public lands within the California Desert Conservation Area, except that all mining claims located on public lands within the California Desert Conservation Area shall be subject to such reasonable regulations as the Secretary may prescribe to effectuate the purposes of this section. Any patent issued on any such mining claim shall recite this limitation and continue to be subject to such regulations. Such regulations shall provide for such measures as may be reasonable to protect the scenic, scientific, and environmental values of the public lands of the California Desert Conservation Area against undue impairment, and to assure against pollution of the streams and waters within the California Desert Conservation Area.

California Desert Conservation Area Advisory Committee. Establishment.

(g) (1) The Secretary, within sixty days after the date of approval of this Act, shall establish a California Desert Conservation Area Advisory Committee (hereinafter referred to as "advisory committee") in accordance with the provisions of section 309 of this Act.

(2) It shall be the function of the advisory committee to advise the Secretary with respect to the preparation and implementation of the comprehensive, long-range plan required under subsection (d) of this section.

Management.

(h) The Secretary of Agriculture and the Secretary of Defense shall manage lands within their respective jurisdictions located in or adjacent to the California Desert Conservation Area, in accordance with the laws relating to such lands and wherever practicable, in a manner consonant with the purpose of this section. The Secretary, the Secretary of Agriculture, and the Secretary of Defense are authorized and directed to consult among themselves and take cooperative actions to carry out the provisions of this subsection, including a program of law enforcement in accordance with applicable authorities to protect the archeological and other values of the California Desert Conservation Area and adjacent lands.

Consultation.

Report to Congress.

(i) The Secretary shall report to the Congress no later than two years after the date of approval of this Act, and annually thereafter, on the progress in, and any problems concerning, the implementation of this section, together with any recommendations, which he may deem necessary, to remedy such problems.

Appropriation authorization.

(j) There are authorized to be appropriated for fiscal years 1977 through 1981 not to exceed $40,000,000 for the purpose of this section, such amount to remain available until expended.

KING RANGE

16 USC 460y-8.

SEC. 602. Section 9 of the Act of October 21, 1970 (84 Stat. 1067), is amended by adding a new subsection (c), as follows:

"(c) In addition to the lands described in subsection (a) of this section, the land identified as the Punta Gorda Addition and the Southern Additions on the map entitled 'King Range National Con-

servation Area Boundary Map No. 2, dated July 29, 1975, is included in the survey and investigation area referred to in the first section of this Act.".

BUREAU OF LAND MANAGEMENT WILDERNESS STUDY

Review; report to President. 43 USC 1782.

SEC. 603. (a) Within fifteen years after the date of approval of this Act, the Secretary shall review those roadless areas of five thousand acres or more and roadless islands of the public lands, identified during the inventory required by section 201(a) of this Act as having wilderness characteristics described in the Wilderness Act of September 3, 1964 (78 Stat. 890; 16 U.S.C. 1131 et seq.) and shall from time to time report to the President his recommendation as to the suitability or nonsuitability of each such area or island for preservation as wilderness: *Provided*, That prior to any recommendations for the designation of an area as wilderness the Secretary shall cause mineral surveys to be conducted by the Geological Survey and the Bureau of Mines to determine the mineral values, if any, that may be present in such areas: *Provided further*, That the Secretary shall report to the President by July 1, 1980, his recommendations on those areas which the Secretary has prior to November 1, 1975, formally identified as natural or primitive areas. The review required by this subsection shall be conducted in accordance with the procedure specified in section 3(d) of the Wilderness Act.

Report to President.

Recommendations to President of the Senate and Speaker of the House.

(b) The President shall advise the President of the Senate and the Speaker of the House of Representatives of his recommendations with respect to designation as wilderness of each such area, together with a map thereof and a definition of its boundaries. Such advice by the President shall be given within two years of the receipt of each report from the Secretary. A recommendation of the President for designation as wilderness shall become effective only if so provided by an Act of Congress.

Regulation.

(c) During the period of review of such areas and until Congress has determined otherwise, the Secretary shall continue to manage such lands according to his authority under this Act and other applicable law in a manner so as not to impair the suitability of such areas for preservation as wilderness, subject, however, to the continuation of existing mining and grazing uses and mineral leasing in the manner and degree in which the same was being conducted on the date of approval of this Act: *Provided*, That, in managing the public lands the Secretary shall by regulation or otherwise take any action required to prevent unnecessary or undue degradation of the lands and their resources or to afford environmental protection. Unless previously withdrawn from appropriation under the mining laws, such lands shall continue to be subject to such appropriation during the period of review unless withdrawn by the Secretary under the procedures of section 204 of this Act for reasons other than preservation of their wilderness character. Once an area has been designated for preservation as wilderness, the provisions of the Wilderness Act which apply to national forest wilderness areas shall apply with respect to the administration and use of such designated area, including mineral surveys required by section 4(d)(2) of the Wilderness Act, and mineral development, access, exchange of lands, and ingress and egress for mining claimants and occupants.

Ante, p. 2751.

16 USC 1131 note.

16 USC 1133.

TITLE VII—EFFECT ON EXISTING RIGHTS; REPEAL OF EXISTING LAWS; SEVERABILITY

EFFECT ON EXISTING RIGHTS

43 USC 1701 note.

SEC. 701. (a) Nothing in this Act, or in any amendment made by this Act, shall be construed as terminating any valid lease, permit, patent, right-of-way, or other land use right or authorization existing on the date of approval of this Act.

(b) Notwithstanding any provision of this Act, in the event of conflict with or inconsistency between this Act and the Acts of August 28, 1937 (50 Stat. 874; 43 U.S.C. 1181a-1181j), and May 24, 1939 (53 Stat. 753), insofar as they relate to management of timber resources, and disposition of revenues from lands and resources, the latter Acts shall prevail.

(c) All withdrawals, reservations, classifications, and designations in effect as of the date of approval of this Act shall remain in full force and effect until modified under the provisions of this Act or other applicable law.

(d) Nothing in this Act, or in any amendments made by this Act, shall be construed as permitting any person to place, or allow to be placed, spent oil shale, overburden, or byproducts from the recovery of other minerals found with oil shale, on any Federal land other than Federal land which has been leased for the recovery of shale oil under the Act of February 25, 1920 (41 Stat. 437, as amended; 30 U.S.C. 181 et seq.).

(e) Nothing in this Act shall be construed as modifying, revoking, or changing any provision of the Alaska Native Claims Settlement Act (85 Stat. 688, as amended; 43 U.S.C. 1601 et seq.).

(f) Nothing in this Act shall be deemed to repeal any existing law by implication.

(g) Nothing in this Act shall be construed as limiting or restricting the power and authority of the United States or—

(1) as affecting in any way any law governing appropriation or use of, or Federal right to, water on public lands;

(2) as expanding or diminishing Federal or State jurisdiction, responsibility, interests, or rights in water resources development or control;

(3) as displacing, superseding, limiting, or modifying any interstate compact or the jurisdiction or responsibility of any legally established joint or common agency of two or more States or of two or more States and the Federal Government;

(4) as superseding, modifying, or repealing, except as specifically set forth in this Act, existing laws applicable to the various Federal agencies which are authorized to develop or participate in the development of water resources or to exercise licensing or regulatory functions in relation thereto;

(5) as modifying the terms of any interstate compact;

(6) as a limitation upon any State criminal statute or upon the police power of the respective States, or as derogating the authority of a local police officer in the performance of his duties, or as depriving any State or political subdivision thereof of any right it may have to exercise civil and criminal jurisdiction on the national resource lands; or as amending, limiting, or infringing the existing laws providing grants of lands to the States.

(h) All actions by the Secretary concerned under this Act shall be subject to valid existing rights.

(i) The adequacy of reports required by this Act to be submitted to the Congress or its committees shall not be subject to judicial review.

(j) Nothing in this Act shall be construed as affecting the distribution of livestock grazing revenues to local governments under the Granger-Thye Act (64 Stat. 85, 16 U.S.C. 580h), under the Act of May 23, 1908 (35 Stat. 260, as amended; 16 U.S.C. 500), under the Act of March 4, 1913 (37 Stat. 843, as amended; 16 U.S.C. 501), and under the Act of June 20, 1910 (36 Stat. 557).

REPEAL OF LAWS RELATING TO HOMESTEADING AND SMALL TRACTS

SEC. 702. Effective on and after the date of approval of this Act, the following statutes or parts of statutes are repealed except the effective date shall be on and after the tenth anniversary of the date of approval of this Act insofar as the listed homestead laws apply to public lands in Alaska: Effective date.

Act of	Chapter	Section	Statute at Large	43 U.S. Code
1. Homesteads:				
Revised Statute 2289				161, 171.
Mar. 3, 1891	561	5	26: 1097	161, 162.
Revised Statute 2290				162.
Revised Statute 2295				163.
Revised Statute 2291				164.
June 6, 1912	153		37: 123	164, 169, 218.
May 14, 1880	89		21: 141	166, 185, 202, 223.
June 6, 1900	821		31: 663	166, 223.
Aug. 9, 1912	280		37: 267	
Apr. 6, 1914	51		38: 312	167.
Mar. 1, 1921	90		41: 1193	
Oct. 17, 1914	335		38: 740	168.
Revised Statute 2297				169.
Mar. 31, 1891	153		21: 511	
Oct. 22, 1914	335		38: 760	170.
Revised Statute 2292				171.
June 8, 1880	136		21: 166	172.
Revised Statute 2301				173.
Mar. 3, 1891	561	6	26: 1098	
June 3, 1896	312	2	29: 197	
Revised Statute 2288				174.
Mar. 2, 1891	561	3	26: 1097	
Mar. 3, 1905	1424		33: 991	
Revised Statute 2296				175.
Apr. 28, 1922	155		42: 502	
May 17, 1900	479	1	31: 179	179.
Jan. 26, 1909	180		31: 740	180.
Sept. 5, 1914	294		38: 712	182.
Revised Statute 2300				183.
Aug. 21, 1918	168	8	40: 957	
Sept. 13, 1918	173		40: 960	
Revised Statute 2302				184, 201.
July 26, 1892	251		27: 270	185.
Feb. 14, 1920	78		41: 434	186.
Jan. 21, 1922	32		42: 356	
Dec. 28, 1922	19		42: 1067	
June 12, 1930	471		46: 580	
Feb. 25, 1925	336		43: 981	187.
June 21, 1934	690		48: 1185	187a.
May 22, 1902	821	2	32: 203	187b.
June 5, 1900	716		31: 270	188, 217.
Mar. 3, 1875	131	15	18: 420	189.
July 4, 1884	180	Only last paragraph of sec. 1.	23: 96	190.
Mar. 1, 1933	160	1	47: 1418	190a.

The following words only: "Provided, That no further allotments of lands to Indians on the public domain shall be made in San Juan County, Utah, nor shall further Indian homesteads be made in said county under the Act of July 4, 1884 (23 Stat. 96; U.S.C. title 48, sec. 190)."

Revised Statutes 2310, 2311				191.
June 13, 1902	1080		32: 384	208.
Mar. 3, 1879	191		20: 472	204.
July 1, 1879	60		21: 46	205.
May 6, 1886	88		24: 22	206.
Aug. 21, 1916	361		39: 515	207.
June 3, 1926	340		43: 357	208.
Revised Statute 2298				211.
Aug. 30, 1890	837		26: 391	212.

Act of	Chapter	Section	Statute at Large	43 U.S. Code
The following words only: "No person who shall after the passage of this act, enter upon any of the public lands with a view to occupation, entry or settlement under any of the land laws shall be permitted to acquire title to more than three hundred and twenty acres in the aggregate, under all of said laws, but this limitation shall not operate to curtail the right of any person who has heretofore made entry or settlement on the public lands, or whose occupation, entry or settlement, is validated by this act:"				
Mar. 3, 1891	561	17	26: 1101	
The following words only: "and that the provision of 'An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-one, and for other purposes,' which reads as follows, viz: 'No person who shall after the passage of this act enter upon any of the public lands with a view to occupation, entry or settlement under any of the land laws shall be permitted to acquire title to more than three hundred and twenty acres in the aggregate under all said laws,' shall be construed to include in the maximum amount of lands the title to which is permitted to be acquired by one person only agricultural lands and not to include lands entered or sought to be entered under mineral land laws."				
Apr. 28, 1904	1776		33: 527	213.
Aug. 3, 1950	521		64: 366	
Mar. 2, 1889	381	6	25: 854	214.
Feb. 20, 1917	98		39: 925	215.
Mar. 4, 1921	162	1	41: 1433	216.
Feb. 19, 1909	160		35: 639	218.
June 13, 1912	166		37: 132	
Mar. 3, 1915	84		38: 953	
Mar. 3, 1915	91		38: 957	
Mar. 4, 1915	150	2	38: 1165	
July 3, 1916	220		39: 344	
Feb. 11, 1913	30		37: 666	218, 219.
June 17, 1910	268		36: 531	219.
Mar. 3, 1915	91		38: 957	
Sept. 5, 1916	440		39: 724	
Aug. 10, 1917	52	10	40: 275	
Mar. 4, 1915	150	1	38: 1162	220.
Mar. 4, 1923	245	1	42: 1445	222.
Apr. 28, 1904	1801		33: 547	224.
Mar. 2, 1907	2527		34: 1224	
May 29, 1908	230	7	35: 466	
Aug. 24, 1912	371		37: 499	
Aug. 22, 1914	270		38: 704	231.
Feb. 25, 1919	21		40: 1153	
July 8, 1916	214		39: 341	232.
Sept. 29, 1919	64		41: 288	233.
Apr. 6, 1922	122		42 :491	233, 272, 273.
Mar. 2, 1889	381	5	25: 854	234.
Dec. 29, 1904	14		28: 569	
July 1, 1879	53	1	21: 48	235.
Dec. 20, 1917	9		40: 430	236.
July 24, 1919	136	Next to last paragraph only.	41: 271	237.
Mar. 2, 1932	89		47: 50	237a.
May 21, 1934	320		48: 787	237b.
May 22, 1935	135		49: 286	237c.
Aug. 19, 1935	560		49: 669	237d.
Mar. 31, 1938	57		52: 149	
Apr. 30, 1938	239		49: 1285	237e.
July 30, 1956	779	1, 2, 4	70: 715	237f,g,h.
Mar. 1, 1921	102		41: 1202	725.
Apr. 7, 1922	125		42: 492	
Revised Statute 2308				239.
June 16, 1898	456		30: 473	240.
Aug. 29, 1916	430		39: 571	
Apr. 7, 1930	108		46: 144	243.
Mar. 3, 1933	196		47: 1424	243a.
Mar. 3, 1879	192		20: 472	251.
Mar. 2, 1889	381	7	25: 855	252.
June 3, 1878	152		20: 91	253.
Revised Statute 2294				254.
May 26, 1900	355		26: 121	
Mar. 11, 1902	182		32: 63	
Mar. 4, 1904	304		33: 59	
Feb. 28, 1923	105		42: 1281	
Revised Statute 2290				255.
Oct. 6, 1917	98		40: 391	
Mar. 4, 1913	149	Only last paragraph of section headed "Public Land Service."	37: 925	256.
May 13, 1932	178		47: 153	256a.
June 14, 1933	99		48: 274	
June 26, 1935	419		49: 404	
June 16, 1937	381		50: 303	
Aug. 27, 1935	770		49: 909	256b.
Sept. 30, 1890	J. Res. 50		26: 504	261.
June 16, 1880	244		21: 287	262.
Apr. 15, 1904	25		33: 189	

Act of	Chapter	Section	Statute at Large	43 U.S. Code
Revised Statute 2304				271.
Mar. 1, 1901	674		31: 947	271, 272.
Revised Statute 2305				277.
Feb. 25, 1919	37		40: 1161	272a.
Dec. 28, 1922	19		42: 1067	
Revised Statute 2306				274.
Mar. 3, 1893	208		27: 593	275.
The following words only: "And provided further: That where soldier's additional homestead entries have been made or initiated upon certificate of the Commissioner of the General Land Office of the right to make such entry, and there is no adverse claimant, and such certificate is found erroneous or invalid for any cause, the purchaser thereunder, on making proof of such purchase, may perfect his title by payment of the Government price for the land: but no person shall be permitted to acquire more than one hundred and sixty acres of public land through the location of any such certificate."				
Aug. 18, 1894	301	Only last paragraph of section headed "Surveying the Public Lands."	28: 397	276.
Revised Statute 2309				277.
Revised Statute 2307				278.
Sept. 21, 1922	357		42: 990	
Sept. 27, 1944	421		58: 747	279-283.
June 25, 1946	474		60: 308	279.
May 31, 1947	68		61: 123	279, 280, 282.
June 16, 1954	305		68: 253	279, 282.
June 3, 1948	309		62: 305	283, 284.
Dec. 29, 1916	9	1-8	39: 862	291-298.
Feb. 28, 1931	328		46: 1454	291.
June 9, 1933	53		48: 119	291.
June 6, 1934	274		48: 469	292.
Oct. 25, 1918	198		40: 1016	293.
Sept. 29, 1919	63		41: 287	294, 295.
Mar. 4, 1923	245	2	42: 1445	302.
Aug. 21, 1916	361		39: 518	1075.
Aug. 28, 1937	876	3	50: 875	1181c.
2. Small tracts:				
June 1, 1938	317		52: 609	682a-e.
June 8, 1954	270		68: 220	
July 14, 1945	246		59: 467	

REPEAL OF LAWS RELATED TO DISPOSAL

SEC. 703. (a) Effective on and after the tenth anniversary of the date of approval of this Act, the statutes and parts of statutes listed below as "Alaska Settlement Laws", and effective on and after the date of approval of this Act, the remainder of the following statutes and parts of statutes are hereby repealed: Effective date.

Act of	Chapter	Section	Statute at Large	43 U.S. Code
1. Sale and Disposal Laws:				
Mar. 3, 1891	561	9	26: 1099	671.
Revised Statute 2354				673.
Revised Statute 2355				674.
May 18, 1898	344	2	30: 418	675.
Revised Statute 2345				676.
Revised Statute 2357				678.
June 15, 1880	227	3, 4	21: 238	679-680.
Mar. 2, 1889	381	4	25: 854	681.
Mar. 1, 1907	2286		34: 1052	682.
Revised Statute 2361				688.
Revised Statute 2362				689.
Revised Statute 2363				690.
Revised Statute 2366				691.
Revised Statute 2368				692.
Revised Statute 2369				693.
Revised Statute 2370				694.
Revised Statute 2371				695.
Revised Statute 2374				696.
Revised Statute 2372				697.
Feb. 24, 1909	181		35: 645	
May 21, 1926	353	The 2 provisos only.	44: 591	
Revised Statute 2375				698.
Revised Statute 2376				699.
Mar. 2, 1889	381	1	25: 854	700.

Act of	Chapter	Section	Statute at Large	43 U.S. Code
2. Townsite Reservation and Sale:				
Revised Statute 2380				711.
Revised Statute 2381				712.
Revised Statute 2382				713.
Aug. 24, 1954	904		68: 792	
Revised Statute 2383				714.
Revised Statute 2384				715.
Revised Statute 2386				717.
Revised Statute 2387				718.
Revised Statute 2388				719.
Revised Statute 2389				720.
Revised Statute 2391				721.
Revised Statute 2392				722.
Revised Statute 2393				723.
Revised Statute 2394				724.
Mar. 3, 1877	113	1, 3, 4	19: 387	725–727.
Mar. 3, 1891	561	16	26: 1099	728.
July 9, 1914	136		38: 454	730.
Feb. 9, 1929	321		33: 930	731.
3. Drainage Under State Laws:				
May 20, 1908	181	1–7	35: 171	1021–1027.
Mar. 3, 1919	113		40: 1321	1028.
May 1, 1956	P.L. 85-867		72: 99	1029–1034.
Jan. 17, 1920	47		41: 362	1041–1043.
4. Abandoned Military Reservation:				
July 5, 1894	214	5	28: 104	1074.
Aug. 24, 1916	361		39: 518	1075.
Mar. 3, 1903	208		27: 598	1076.
The following words only: "Provided, That the President is hereby authorized by proclamation to withhold from sale and grant for public use to the municipal corporation in which the same is situated all or any portion of any abandoned military reservation not exceeding twenty acres in one piece."				
Aug. 23, 1894	314		28: 491	1077, 1078.
Feb. 11, 1909	143		35: 623	1079.
Feb. 15, 1900	92		31: 684	1080, 1077.
Apr. 23, 1904	1496		33: 306	1081.
5. Public Lands; Oklahoma:				
May 2, 1890	182	Last paragraph of sec. 13 and secs. 20, 21, 22, 24, 27.	26: 90	1091–1094, 1096, 1097.
Mar. 3, 1891	543	16	26: 1026	1098.
Aug. 7, 1946	772	1, 2	60: 872	1100–1101.
Aug. 3, 1955	496	1–8	69: 445	1102–1102g.
May 14, 1900	207		36: 176	1111–1117.
Sept. 1, 1903	J. Res. 4		33: 11	1118.
May 11, 1908	199	1, 2	35: 116	1119.
Jan. 18, 1907	62	1–3, 5, 7	34: 850	1131–1134.
June 23, 1897	6		30: 105	
Mar. 1, 1899	328		30: 906	
6. Sales of Isolated Tracts:				
Revised Statute 2455				1171.
Feb. 20, 1905	139		33: 687	
June 27, 1906	3504		34: 517	
Mar. 28, 1912	67		37: 77	
Mar. 9, 1928	164		45: 253	
June 28, 1934	965	14	48: 1274	
July 30, 1947	353		61: 630	
Apr. 24, 1950	128		45: 457	1171a.
May 23, 1950	213		46: 377	1171b.
Feb. 4, 1919	18		40: 1050	1172.
May 10, 1939	178		41: 646	1173.
Aug. 11, 1923	62		42: 156	1175.
May 19, 1926	327		44: 606	1176.
Feb. 14, 1931	170		46: 1106	1177.
7. Alaska Special Laws:				
Mar. 3, 1891	561	11	26: 1099	732.
May 25, 1926	370		44: 629	733–736.
May 20, 1960	P.L. 86-34		77: 62	
July 24, 1947	306		61: 414	738.
Aug. 17, 1961	P.L. 87-147		75: 364	270-13.
Oct. 3, 1962	P.L. 87-742		76: 740	
July 19, 1963	P.L. 88-60		77: 90	687b-5.
May 14, 1898	299	1	30: 409	270.
Mar. 3, 1899	1002		30: 1099	
Apr. 20, 1900	187	1	84: 94	
Aug. 3, 1956	496		69: 444	270, 687a-2.
Apr. 30, 1960	137	2–5	84: 96	270-5, 270-6, 270-7, 687a-1.
July 11, 1956	571	2	70: 520	270-7.
July 6, 1916	238		39: 262	270-8, 270-9.
June 26, 1918	110		40: 632	270-10, 270-14.
July 11, 1956	571	1	70: 526	
8. Alaska Settlement Laws:				
Mar. 8, 1922	99	1	42: 415	270-11.
Aug. 23, 1958	P.L. 85-725	1, 4	72: 730	
Apr. 15, 1926	121		44: 243	270-12.
Apr. 20, 1950	134	3	64: 99	270-16, 270-17.
May 14, 1898	299	10	30: 413	270-4, 687a to 687a-4.

Act of	Chapter	Section	Statute at Large	43 U.S. Code
Mar. 3, 1927	329		44: 1364	
May 26, 1934	357		48: 809	
Aug. 23, 1958	P.L. 85-723	3	72: 730	
Mar. 3, 1961	561	13	26: 1100	687a-6.
Aug. 30, 1949	521		63: 679	687b to 687b-4.
9. Pittman Underground Water Act: Sept. 22, 1922	400		42: 1012	356.

(c) Effective on and after the tenth anniversary of the date of approval of this Act, section 2 of the Act of March 8, 1922 (42 Stat. 415, 416), as amended by section 2 of the Act of August 23, 1958 (72 Stat. 730), is further amended to read:

Effective date.
43 USC 270-12, 270-12 note.

"The coal, oil, or gas deposits reserved to the United States in accordance with the Act of March 8, 1922 (42 Stat. 415; 43 U.S.C. 270-11 et seq.), as added to by the Act of August 17, 1961 (75 Stat. 384; 43 U.S.C. 270-13), and amended by the Act of October 3, 1962 (76 Stat. 740; 43 U.S.C. 270-13), shall be subject to disposal by the United States in accordance with the provisions of the laws applicable to coal, oil, or gas deposits or coal, oil, or gas lands in Alaska in force at the time of such disposal. Any person qualified to acquire coal, oil, or gas deposits, or the right to mine or remove the coal or to drill for and remove the oil or gas under the laws of the United States shall have the right at all times to enter upon the lands patented under the Act of March 8, 1922, as amended, and in accordance with the provisions hereof, for the purpose of prospecting for coal, oil, or gas therein, upon the approval by the Secretary of the Interior of a bond or undertaking to be filed with him as security for the payment of all damages to the crops and improvements on such lands by reason of such prospecting. Any person who has acquired from the United States the coal, oil, or gas deposits in any such land, or the right to mine, drill for, or remove the same, may reenter and occupy so much of the surface thereof incident to the mining and removal of the coal, oil, or gas therefrom, and mine and remove the coal or drill for and remove oil and gas upon payment of the damages caused thereby to the owner thereof, or upon giving a good and sufficient bond or undertaking in an action instituted in any competent court to ascertain and fix said damages: *Provided*, That the owner under such limited patent shall have the right to mine the coal for use on the land for domestic purposes at any time prior to the disposal by the United States of the coal deposits: *Provided further*, That nothing in this Act shall be construed as authorizing the exploration upon or entry of any coal deposits withdrawn from such exploration and purchase.".

Coal, oil, or gas deposits, disposal.

(d) Section 3 of the Act of August 30, 1949 (63 Stat. 679; 43 U.S.C. 687b et seq.), is amended to read:

Alaskan lands, damage liability.
43 USC 687b-2.

"Notwithstanding the provisions of any Act of Congress to the contrary, any person who prospects for, mines, or removes any minerals from any land disposed of under the Act of August 30, 1949 (63 Stat. 679), shall be liable for any damage that may be caused to the value of the land and tangible improvements thereon by such prospecting for, mining, or removal of minerals. Nothing in this section shall be construed to impair any vested right in existence on August 30, 1949.".

REPEAL OF WITHDRAWAL LAWS

Effective date.

Sec. 704. (a) Effective on and after the date of approval of this Act, the implied authority of the President to make withdrawals and reservations resulting from acquiescence of the Congress (U.S. v. Midwest Oil Co., 236 U.S. 459) and the following statutes and parts of statutes are repealed:

Act of	Chapter	Section	Statute at Large	43 U.S. Code
Oct. 2, 1888	1069		25: 527	662.
Only the following portion under the section headed U.S. Geological Survey: The last sentence of the paragraph relating to investigation of irrigable lands in the arid region, including the proviso at the end thereof.				
Mar. 3, 1891	561	24	26: 1103	14 U.S.C. 471.
Mar. 1, 1893	183	21	27: 510	43 U.S.C. 681.
Aug. 18, 1894	301	4	28: 422	641.
Only that portion of the first sentence of the second paragraph beginning with "and the Secretary of the Interior" and ending with "shall not be approved."				
May 14, 1898	299	10	30: 413	687a-4.
Only the fifth proviso of the first paragraph.				
June 17, 1902	1093	3	32: 388	416.
Only that portion of section three preceding the first proviso.				
Apr. 16, 1906	1631	1	34: 116	561.
Only the words "withdraw from public entry any lands needed for townsite purposes", and also after the word "case", the word "and".				
June 27, 1906	3559	4	34: 520	561.
Only the words "withdraw and".				
Mar. 15, 1910	96		36: 237	643.
June 25, 1910	421	1, 2	36: 847	141, 142, 18 U.S.C. 471(a).
All except the second and third provisos.				
June 25, 1910	431	13	36: 858	148.
Mar. 12, 1914	37	1	38: 305	975b.
Only that portion which authorizes the President to withdraw, locate, and dispose of lands for townsites.				
Oct. 5, 1914	316	1	38: 727	560(a).
June 9, 1916	137	2	39: 219	
Under "Class One," only the words "withdrawal and."				
Dec. 29, 1916	9	10	39: 865	300.
June 7, 1924	346	9	43: 653	16 U.S.C. 471.
Aug. 19, 1935	561	"Sec. 4"	49: 661	22 U.S.C. 277c.
In "Sec. 4", only paragraph "(c)" except the proviso thereof.				
Mar. 3, 1927	299	4	44: 1347	25 U.S.C. 398d.
Only the proviso thereof.				
May 24, 1928	729	4	45: 729	49 U.S.C. 214.
Dec. 21, 1928	42	9	45: 1063	617b.
Mar. 6, 1946	58		60: 36	617b.
First sentence only.				
June 16, 1934	557	"Sec. 40(a)"	48: 977	80 U.S.C. 220a.
The proviso only.				
May 1, 1936	254	3	49: 1250	
May 31, 1938	304		52: 593	25 U.S.C. 497.
July 30, 1939	434		53: 1071	16 U.S.C. 471b.
May 26, 1940	220	1	54: 224	16 U.S.C. 552a.
All except the second proviso.				
Apr. 11, 1956	203	8	70: 110	620g.
Only the words "and to withdraw public lands from entry or other disposition under the public land laws."				
Aug. 10, 1956	Chapter 949	9772	70A: 588	10 U.S.C. 4472, 9772.
Aug. 16, 1962	P.L. 87-560	4	76: 240	616c.
Only the words "and to withdraw public lands from entry or other disposition under the public land laws."				

43 USC 617h.

(b) The second sentence of the Act of March 6, 1946 (60 Stat. 36; 43 U.S.C. 617(h)), is amended by deleting "Thereafter, at the direction of the Secretary of the Interior, such lands" and by substituting therefor the following: "Lands found to be practicable of irrigation and reclamation by irrigation works and withdrawn under the Act of March 6, 1946 (43 U.S.C. 617(h))".

REPEAL OF LAW RELATING TO ADMINISTRATION OF PUBLIC LANDS

Effective date.

Sec. 705. (a) Effective on and after the date of approval of this Act, the following statutes or parts of statutes are repealed:

Act of	Chapter	Section	Statute at Large	43 U.S. Code
1. Mar. 2, 1895	174		28: 744	176.
2. June 26, 1934	865	8	48: 1272	315g.
June 26, 1936	842	8	49: 1976, title I.	
June 19, 1948	548	1	62: 533	
July 9, 1963	P.L. 87-524		76: 140	315g-1.
3. Aug. 24, 1937	744		50: 748	315p.
4. Mar. 3, 1909	271	2d proviso only.	35: 845	772.
June 25, 1910	J. Res. 40		36: 864	
5. June 21, 1934	689		48: 1185	871a.
6. Revised Statute 2447				1151.
Revised Statute 2448				1152.
7. June 6, 1874	225		18: 62	1153; 1154.
8. Jan. 28, 1879	30		20: 274	1155.
9. May 30, 1894	87		28: 94	1156.
10. Revised Statute 2471				1191.
Revised Statute 2472				1192.
Revised Statute 2473				1193.
11. July 14, 1960	P.L. 86-649	101-202(a), 203-204(a), 301-303.	74: 506	1361, 1362, 1363-1363.
12. Sept. 26, 1970	P.L. 91-429		84: 885	1362a.
13. July 31, 1939	401	1, 2	53: 1144	

REPEAL OF LAWS RELATING TO RIGHTS-OF-WAY

SEC. 706. (a) Effective on and after the date of approval of this Act, R.S. 2477 (43 U.S.C. 932) is repealed in its entirety and the following statutes or parts of statutes are repealed insofar as they apply to the issuance of rights-of-way over, upon, under, and through the public lands and lands in the National Forest System: Effective date.

Act of	Chapter	Section	Statute at Large	43 U.S. Code
Revised Statutes 2339				661.
The following words only: "and the right-of-way for the construction of ditches and canals for the purpose herein specified is acknowledged and confirmed: but whenever any person, in the construction of any ditch or canal, injures or damages the possession of any settler on the public domain, the party committing such injury or damages shall be liable to the party injured for such injury or damage."				
Revised Statutes 2340				661.
The following words only: ", or rights to ditches and reservoirs used in connection with such water rights."				
Feb. 26, 1897	335		29: 599	664.
Mar. 3, 1899	427	1	30: 1233	665, 958, (16 U.S.C. 525).
The following words only: "that in the form provided by existing law the Secretary of the Interior may file and approve surveys and plats of any right-of-way for a wagon road, railroad, or other highway over and across any forest reservation or reservoirs site when in his judgment the public interests will not be injuriously affected thereby."				
Mar. 3, 1875	152		18: 482	934-939.
May 14, 1898	299	2-6	30: 409	942-1 to 942-9.
Feb. 27, 1901	614		31: 815	943.
June 28, 1906	3348		34: 481	944.
Mar. 3, 1891	561	18-21	26: 1101	946-949.
Mar. 4, 1917	184	1	39: 1197	
May 26, 1926	409		44: 668	
Mar. 1, 1921	94		41: 1194	950.
Jan. 13, 1897	11		29: 484	952-955.
Mar. 3, 1923	219		42: 1437	
Jan. 21, 1895	87		28: 635	951, 956, 957.
May 14, 1898	179		29: 120	
May 11, 1898	292		30: 408	
Mar. 4, 1917	184	2	39: 1197	
Feb. 15, 1901	372		31: 790	959 (16 U.S.C. 79, 522).
Mar. 4, 1911	238		36: 1253	961 (16 U.S.C. 1, 430, 523).
Only the last two paragraphs under the subheading "Improvement of the National Forests" under the heading "Forest Service."				
May 27, 1952	338		66: 95	
May 21, 1896	212		29: 127	962-965.
Apr. 12, 1910	155		36: 266	966-970.
June 4, 1897	2	1	30: 35	16 U.S.C. 551.
Only the eleventh paragraph under Surveying the public lands.				
July 22, 1937	517	31, 32	50: 525	7 U.S.C. 1010-1012.
Sept. 3, 1954	1255	1	68: 1148	971c.
July 7, 1960	Public Law 86-606		74: 353	40 U.S.C. 345c.
Oct. 23, 1962	Public Law 87-852	1-3	76: 1129	40 U.S.C. 319-319c.
Feb. 1, 1905	288	4	33: 628	16 U.S.C. 524.

43 USC 1701 note.

(b) Nothing in section 706(a), except as it pertains to rights-of-way, may be construed as affecting the authority of the Secretary of Agriculture under the Act of June 4, 1897 (30 Stat. 35, as amended, 16 U.S.C. 551); the Act of July 22, 1937 (50 Stat. 525, as amended, 7 U.S.C. 1010-1012); or the Act of September 3, 1954 (68 Stat. 1146, 43 U.S.C. 931c).

SEVERABILITY

43 USC 1701 note.

SEC. 707. If any provision of this Act or the application thereof is held invalid, the remainder of the Act and the application thereof shall not be affected thereby.

Approved October 21, 1976.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 94-1163 accompanying H.R. 13777 (Comm. on Interior and Insular Affairs) and No. 94-1724 (Comm. of Conference).
SENATE REPORT No. 94-583 (Comm. on Interior and Insular Affairs).
CONGRESSIONAL RECORD, Vol. 122 (1976):
Feb. 23, 25, considered and passed Senate.
July 22, considered and passed House, amended, in lieu of H.R. 13777.
Sept. 30, House agreed to conference report.
Oct. 1, Senate agreed to conference report.

Note.—A change has been made in the slip law format to provide for one-time preparation of copy to be used for publication of both slip laws and the United States Statutes at Large volumes. Comments from users are invited by the Office of the Federal Register, National Archives and Records Service, Washington, D.C. 20408.

43 CFR §3833.5(d)

"In the case of any action or contest affecting an unpatented mining claim, mill site or tunnel site, only those owners who have recorded their claim or site pursuant to §3833.1-2 or filed a notice of transfer of interest pursuant to §3383.3, will be considered by the United States as the record owners of such claim or site and will be personally notified of such action or contest. Owners who have not recorded a claim or site or filed a notice of transfer will not be personally served but will be put on notice only by publication and will be bound by any contest proceeding even though they have not been personally served. Diligent search and inquiry for the purposes of contesting the validity of a mining claim under this Title shall only require a search of the records of the proper BLM office and shall not require any other search or inquiry.

(e) Actual notice of an unpatented mining claim or mill or tunnel site by any employee or officer of the United States shall not exempt the claim or site from the requirements of this sub-part."

IN THE UNITED STATES DISTRICT COURT FOR

THE EASTERN DISTRICT OF CALIFORNIA

WESTERN MINING COUNCIL, a corporation, et al., Plaintiffs. v. CECIL ANDRUS, SECRETARY OF THE INTERIOR OF THE UNITED STATES OF AMERICA, Defendant	Civil No. S77-579 PCW DISMISSAL OF COMPLAINT Filed Apr 19, 1978

Defendant's Motion to Dismiss came on regularly for hearing before the Honorable Philip C. Wilkins on April 10, 1978. Plaintiffs were represented by Jane Skanderup, and the defendant was represented by Betty Wolfe, Assistant United States Attorney.

The Court having reviewed the file herein, having heard the arguments of counsel, and good cause appearing threfor:

IT IS HEREBY ORDERED that the defendant's motion to dismiss pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure for lack of subject matter jurisdiction be, and the same is, hereby denied;

IT IS FURTHER ORDERED that the defendant's motion to dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure because plaintiffs have failed to state a justiciable claim be, and the same is, hereby granted.

IT IS FURTHER ORDERED that plaintoffs Complaint be and the same his, hereby dismissed with leave to amend within fifteen days.

Cated April 19, 1978

/s/ Philip C. Wilkins
United States District Judge

UNITED STATES DISTRICT COURT FOR

THE EASTERN DISTRICT OF CALIFORNIA

WESTERN MINING COUNCIL, et al.,	)	
vs.	)	Civil Action File No. S-77-579 PCW
CECIL ANDRUS, Secretary of the Interior of the United States of America,	)	JUDGMENT
		Filed May 8, 1978

This action came on for hearing before the Court, Honorable Philip C. Wilkins, United States District Judge, presiding, and the issues havin g been duly heard and a decision having been duly redered, May 8, 1978,

It is Ordered and Adjudged that on April 10, 1978, at its regular law and Motion Calendar, the court orally granted defendant's motion to dismiss, pursuant to F. R.C.P. 12(b)(6), and granted plaintiff leave to amend her complaint within 15 days. A written order to this effect was signed and filed April 19, 1978.

Time for amendment of the complaint now having passed, plaintiff's action is hereby dismissed with prejudice and judgment is entered accordingly.

Dated at Sacramento, California this 8th day of May, 1978.

/s/ James R. Grindstaff
Clerk of Court
By /s/ L. Minor
Deputy Clerk

WESTERN MINING COUNCIL, a corporation, Robert G. Wright, Cal-Ore Chapter, Western Mining Council, Barney McClendon, Jr., Nor-Cal Chapter, Western Mining Council, Richard Arbo, Hayfork Chapter Western Mining Council, Larry Cordtz, Prospectors & Miners' Chapter of Shasta County, Western Mining Council, Carl Ripatte, Mother Lode Miners Association, Chapter of Western Mining Council, Pat Crombie, Northern Mining Council, Chapter of Western Mining Council, Barney Green, Los Angeles County Chapter, Western Mining Council, Robert Sanders, Tuolumne Chapter, Western Mining Council, Emmett Dahl, Santa Clara County Chapter, Western Mining Council, Ron Reeves, Mariposa County Chapter, Western Mining Council, Arne Soares, Rand-El Paso Mountains Chapter, Western Mining Council, Keith O'Hara, Doris Dietemann, Plaintiffs-Appellants,

v.

James G. WATT,* Secretary of the Interior of the United States of America, Defendant-Appellee.

No. 78-2669.

United States Court of Appeals, Ninth Circuit.

Argued and Submitted Aug. 11, 1980.

Decided April 23, 1981.

Various plaintiffs brought action seeking declaration that all or part of the Federal Land Policy and Management Act of 1976 was unconstitutional. The United States District Court for the Eastern District of California, Philip C. Wilkins, Chief Judge, dismissed action with prejudice, and plaintiffs appealed. The Court of Appeals, East, District Judge, sitting by designation, held: (1) plaintiffs lacked standing to assert claim that provision of statute violated their right to be protected against unreasonable searches and seizure; (2) Act did not authorize Secretary of Interior to render plaintiffs' activities criminal without prior notice; (3) failure to allege any actual or threatened injury precluded standing; (4) filing requirements relating to unpatented mining claims were not arbitrary; and (5) status as federal and state taxpayers did not provide standing.

Affirmed.

1. Federal Courts ⇐12

Jurisdiction of federal court is limited to adjudication of cases or controversies. U.S.C.A.Const. Art. 3, § 2.

2. Federal Courts ⇐12

Case or controversy requirement for federal court jurisdiction demands first that issues be justiciable and that plaintiffs have standing to assert their claims. U.S.C.A.Const. Art. 3, § 2.

3. Federal Civil Procedure ⇐103

Standing requires as constitutional minimum that plaintiff allege such a personal stake in outcome of controversy as to assure that concrete adverseness which sharpens presentation of issues upon which court so largely depends for illumination of difficult constitutional question. U.S.C.A.Const. Art. 3, § 2.

* We substitute and name James G. Watt, the successor to the original defendant Cecil Andrus, as the Secretary of the Interior, per Fed.R.App.P. 43.

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4. Federal Civil Procedure ⇐103

Standing question focuses upon party asserting claim. U.S.C.A.Const. Art. 3, § 2.

5. Federal Civil Procedure ⇐103

Courts have imposed standing limitations beyond those required by Constitution. U.S.C.A.Const. Art. 3, § 2.

6. Declaratory Judgment ⇐61

Case or controversy requirement applies to actions under Declaratory Judgments Act. 28 U.S.C.A. § 2201; U.S.C.A. Const. Art. 3, § 2.

7. Federal Courts ⇐12, 30

Standing and justiciability are limitations upon exercise of jurisdiction of federal courts and federal court must consider such issues in regard to various claims presented despite plaintiffs' contention that justiciability issue is not properly before court. 28 U.S.C.A. § 2201; U.S.C.A.Const. Art. 3, § 2.

8. Federal Civil Procedure ⇐1835

On motion to dismiss for failure to state claim, federal court will generally assume factual allegations to be true but will not necessarily assume truth of legal conclusions merely because they are cast in form of factual allegation. Fed.Rules Civ.Proc. Rule 12(b)(6), 28 U.S.C.A.

9. Federal Civil Procedure ⇐1829

Liberal reading accorded complaints on motion to dismiss for failure to state a claim is subject to requirement that facts demonstrating standing must be clearly alleged in complaint. Fed.Rules Civ. Proc. Rule 12(b)(6), 28 U.S.C.A.

10. Federal Civil Procedure ⇐103

To have standing, plaintiffs claiming that statute violated the right to be protected against unreasonable searches and seizures must allege some threatened or actual injury resulting from application of statute to them. Federal Land Policy and Management Act of 1976, § 303(c)(1), 43 U.S.C.A. § 1733(c)(1); U.S.C.A.Const. Amend. 4.

11. Federal Civil Procedure ⇐103

Standing of trade associations to maintain action claiming that federal statute violated right to be protected against unreasonable searches and seizures hinged upon standing of members of association. Federal Land Policy and Management Act of 1976, § 303(c)(1), 43 U.S.C.A. § 1733(c)(1); U.S.C.A.Const. Amend. 4.

12. Federal Civil Procedure ⇐103

Nonprofit association of miners and owners of unpatented mining claims, mining council's chapters, and individuals who mined and own unpatented mining claims and who were citizens and taxpayers of California and United States lacked standing to maintain claim that Federal Land Policy and Management Act violated their right to be protected against unreasonable searches and seizures. Federal Land Policy and Management Act of 1976, § 303(c)(1), 43 U.S.C.A. § 1733(c)(1); U.S.C.A.Const. Amend. 4.

13. Public Lands ⇐96

Statutes authorizing Secretary of Interior to take any action to prevent unnecessary or undue degradation of public land, directing Secretary to issue regulation, and providing criminal penalties for violations of regulation did not impermissibly authorize Secretary to render plaintiffs' activities criminal without prior no-

tice. Federal Land Policy and Management Act of 1976, §§ 302(b), 303(a, g), 310, 43 U.S.C.A. §§ 1732(b), 1733(a, g), 1740; 5 U.S.C.A. §§ 551 et seq., 553(b, c).

14. Federal Civil Procedure ⇐103

Secretary of Interior's statement that "plaintiff cannot dig in the ground" was not a sufficiently specific threat of prosecution to confer standing upon plaintiffs who claimed that they were prevented from engaging in mining and doing assessment work required to retain their mining claims because they feared prosecution. Federal Land Policy and Management Act of 1976, §§ 302(b), 303(a, g), 310, 43 U.S.C.A. §§ 1732(b), 1733(a, g), 1740; 28 U.S.C.A. § 2201; U.S.C.A.Const. Art. 3, § 2.

15. Federal Courts ⇐12

Plaintiffs cannot create justiciable case or controversy simply by misreading statutes and claiming as injury fears born of their own error. 28 U.S.C.A. § 2201; U.S.C.A.Const. Art. 3, § 2.

16. Declaratory Judgment ⇐122
Federal Courts ⇐12

Mere existence of statute, which may or may not ever be applied to plaintiff, is not sufficient to create a case or controversy within federal court jurisdiction and is insufficient to satisfy actual controversy requirement of Declaratory Judgment Act. 28 U.S.C.A. § 2201; U.S.C.A.Const. Art. 3, § 2.

17. Federal Civil Procedure ⇐103
Federal Courts ⇐13

Mere possibility that Secretary of Interior may act in arguably unconstitutional manner pursuant to one or more provisions of the Federal Land Policy and Management Act of 1976 was insufficient to establish real and substantial controversy or to meet standing requirement of threatened or actual injury. 30 U.S.C.A. §§ 22–24, 26–28, 29, 30, 33–35, 37, 39–42, 47; Federal Land Policy and Management Act of 1976, §§ 304(b), 305(a), 501–504, 601(b), 43 U.S.C.A. §§ 1734(b), 1735(a), 1761–1764, 1781(c); U.S.C.A. Const. Art. 1, § 10; Art. 3, § 2; Amend. 5.

18. Federal Civil Procedure ⇐103

Plaintiffs who were nonprofit association of miners and owners of unpatented mining claims, several of association's chapters, and several individuals who mined and owned patented mining claims and were citizens and taxpayers of both California and United States, and who alleged that Federal Land Policy and Management Act of 1976 and regulations promulgated thereunder impaired their contract but who did not allege any actual or threatened injury lacked standing to maintain action. 30 U.S.C.A. §§ 22–24, 26–28, 29, 30, 33–35, 37, 39–42, 47; Federal Land Policy and Management Act of 1976, §§ 304(b), 305(a), 501–504, 601(b), 43 U.S.C.A. §§ 1734(b), 1735(a), 1761–1764, 1781(c); U.S.C.A.Const. Art. 1, § 10; Art. 3, § 2; Amend. 5.

19. Federal Civil Procedure ⇐103
Federal Courts ⇐13

Allegations as to losing unpatented mining claims by failing to comply with filing requirements of Federal Land Policy and Management Act of 1976 indicated a sufficiently real and immediate threat of injury to give rise to justiciable actual controversy and to give standing to plaintiff. Federal Land Policy and Management Act of 1976, §§ 314, 314(a–c), 43 U.S.C.A. §§ 1744, 1744(a–c); 30 U.S.C.A. § 28–1; U.S.C.A.Const. Art. 3, § 2.

20. Mines and Minerals ⇐40

Allegation that Federal Land Policy and Management Act of 1976 requirements for filing of unpatented mining claims were arbitrary and unreasonable were insufficient to state claim upon which relief could be granted. Federal Land Policy and Management Act of 1976, §§ 314, 314(a–c), 43 U.S.C.A. §§ 1744, 1744(a–c); Fed.Rules Civ.Proc. Rule 12(b)(6), 28 U.S.C.A.

21. Constitutional Law ⇐251.3

Statutes which are clearly arbitrary and unreasonable, having no substantial relation to public health, safety, morals or general welfare violate Fifth Amendment's due process clause. U.S.C.A. Const. Amend. 5.

22. Mines and Minerals ⇐40

Federal Land Policy and Management Act of 1976 requirements for filing of unpatented mining claims were not arbitrary or unreasonable. Federal Land Policy and Management Act of 1976, § 314(a–c), 43 U.S.C.A. § 1744(a–c).

23. Federal Civil Procedure ⇐103

Where plaintiffs claiming that regulations denied them due process failed to sufficiently allege how regulation had been or would be applied to them, plaintiffs lacked standing to challenge regulation. Federal Land Policy and Management Act of 1976, § 314, 43 U.S.C.A. § 1744.

24. United States ⇐79

Not every provision of Constitution which directs or prohibits some action by Congress constitutes sufficiently specific limitation on constitutional taxing and spending power. U.S.C.A.Const. Art. 1, §§ 8, 9.

25. States ⇐8

Provisions of Constitution relating to Congress admitting new states are not specific limitations upon a congressional taxing and spending power. U.S.C.A. Const. Art. 4, § 3.

26. Constitutional Law ⇐42.1(1)

Fact of being federal taxpayers did not give standing to plaintiffs seeking determination that Federal Land Policy and Management Act of 1976 provision which declared policy of United States to retain public lands in federal ownership was unconstitutional. Federal Land Policy and Management Act of 1976, § 102(a)(1, 13), 43 U.S.C.A. § 1701(a)(1, 13); U.S.C.A.Const. Art. 4, § 3.

27. Constitutional Law ⇐42.1(1)

Fact of being state taxpayers did not give standing to plaintiffs seeking determination that Federal Land Policy and Management Act of 1976 provision which declared policy of United States to retain public lands in federal ownership was unconstitutional. Federal Land Policy and Management Act of 1976, § 102(a)(1, 13), 43 U.S.C.A. § 1701(a)(1, 13); U.S.C.A. Const. Art. 4, § 3.

28. Federal Civil Procedure ⇐103

In context of state taxpayer challenge to federal statutes, policies of standing doctrine demand that plaintiff allege some injury which is more definite and individual than higher state taxes allegedly suffered.

29. Constitutional Law ⇐42.1(1)

Increase in state taxes allegedly suffered by plaintiffs as result of policy of United States to retain public lands in federal ownership was insufficient to give plaintiffs standing to challenge con-

stitutionality of statute setting forth such policy. Federal Land Policy and Management Act of 1976, § 102(a)(1, 13), 43 U.S.C.A. § 1701(a)(1, 13).

30. Federal Civil Procedure ⇐103

Federal courts do not sit to pass judgment on congressional declaration of policy which affects plaintiffs only in an attenuated and generalized way.

31. Armed Services ⇐1

Constitutional provision granting Congress power to raise and support armies but without appropriating money for longer term than two years does not apply to every type of armed force. U.S. C.A.Const. Art. 1, § 8, cl. 12.

32. Armed Services ⇐1

Law enforcement personnel engaged in routine law enforcement activities on federal lands pursuant to statutory provision permitting Secretary of Interior to contract with local officials of law enforcement services could not be characterized as "armies" within constitutional provision permitting Congress to raise and support armies without appropriating money for longer term than two years. Federal Land Policy and Management Act of 1976, § 303(c)(1), 43 U.S.C.A. § 1733(c)(1); U.S.C.A.Const. Art. 1, § 8, cl. 12.

Appeal from the United States District Court for the Eastern District of California.

Before ANDERSON and FLETCHER, Circuit Judges, and EAST,** District Judge.

** Honorable William G. East, Senior United States District Judge for the District of Oregon, sitting by designation.

EAST, District Judge:

Plaintiffs appeal from a judgment dismissing their claim with prejudice pursuant to Fed.R.Civ.P. 12(b)(6) for failure to state a claim upon which relief can be granted. Plaintiffs sought a declaratory judgment rendering all or part of the Federal Land Policy and Management Act of 1976, 43 U.S.C. §§ 1701–1782, unconstitutional and invalid. Plaintiffs also sought to enjoin the Secretary of the Interior from expending certain funds for the enforcement of the Act. This appeal raises questions of standing, justiciability, and the adequacy of plaintiffs' allegations to state claims upon which relief can be granted. We note jurisdiction under 28 U.S.C. § 1291 and affirm.

I. *THE CASE*

In 1976, Congress passed the Federal Land Policy and Management Act ("Act"), 43 U.S.C. §§ 1701–1782. The Act establishes a system of land use planning and management for lands owned by the United States, and includes several provisions relating to mining claims.[1] The parties plaintiff include: (1) the Western Mining Council, a non-profit association of miners and owners of unpatented mining claims; (2) several of the Mining Council's chapters; and (3) several individuals who mine and own unpatented mining claims and who are citizens and taxpayers of both California and the United States.

Plaintiffs filed this action on November 2, 1977, seeking a declaratory judgment that the Act is unconstitutional in whole or in part, and seeking to enjoin the Secretary of the Interior from ex-

1. Pub.L.No. 94-579.

pending certain funds appropriated pursuant to the Act for law enforcement on the public lands. Plaintiffs allege that the Act violates the Fourth, Fifth and Sixth Amendments to the Constitution, the provisions of Article IV, Section 3, and the two year limitation upon appropriations for armies found in Art. I, § 8, cl. 12.[2] The complaint further alleges that the Act injures the individual plaintiffs by infringing their contractual rights as owners of unpatented mining claims located prior to passage of the 1976 Act, infringing their right to mine the claims, exposing them to unlawful searches and seizures, placing them in jeopardy from an unconstitutionally vague criminal statute, injuring them as state and federal taxpayers and denying their due process rights. The Western Mining Council and several of its chapters claim injury due to the alleged impairment of their members' ability to pay dues.

On April 19, 1978, the District Court granted defendant's motion to dismiss pursuant to Fed.R.Civ.P. 12(b)(6) on the specific ground that plaintiffs had failed to state a justiciable claim, and granted leave to amend. When plaintiffs did not amend their complaint within 15 days, the District Court entered a judgment dismissing the complaint with prejudice, from which plaintiffs appeal.

II. *JUSTICIABILITY AND STANDING*

[1] The jurisdiction of the federal courts is limited to the adjudication of "cases or controversies" by Art. III, § 2, of the Constitution. *Simon v. Eastern Kentucky Welfare Rights Org.*, 426 U.S. 26, 37–38, 96 S.Ct. 1917, 1923–1924, 48 L.Ed.2d 450 (1976); *Warth v. Seldin*, 422 U.S. 490, 499, 95 S.Ct. 2197, 2205, 45 L.Ed.2d 343 (1975). There is a substantial question as to whether plaintiffs' allegations are sufficient to satisfy this jurisdictional prerequisite.

[2] The "case or controversy" requirement demands first that the issues be justiciable; *i. e.*, they must "present a real and substantial controversy which unequivocally calls for the adjudication of rights." *Poe v. Ullman*, 367 U.S. 497, 509, 81 S.Ct. 1752, 1759, 6 L.Ed.2d 989 (1961) (Brennan, J. concurring). A second case or controversy requirement is that the plaintiffs have standing to assert their claims. In *Warth v. Seldin*, 422 U.S. 490, 95 S.Ct. 2197, 45 L.Ed.2d 343, the Supreme Court noted that the question of standing is in essence

> "whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues. This inquiry involves both constitutional limitations on federal-court jurisdiction and prudential limitations on its exercise.... In both dimensions it is founded in concern about the proper—and properly limited—role of the courts in a democratic society." *Id.* at 498, 95 S.Ct. at 2205 (citations omitted).

[3, 4] Standing requires as a constitutional minimum that a plaintiff allege "such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions." *Baker v. Carr*, 369 U.S. 186, 204, 82 S.Ct. 691, 703, 7 L.Ed.2d 663 (1962). The standing question focuses upon the party asserting the claim because "[t]he Art. III judicial power exists only to redress or otherwise to

2. Plaintiffs specifically challenge the constitutionality of 43 U.S.C. §§ 1701(a)(1), 1701(a)(13), 1732(b), 1733(a), (c), (g), and (e), 1734(b), 1735(a), 1740, 1744, 1761–1764, and 1781(c).

protect against injury to the complaining party, even though the court's judgment may benefit others collaterally. A federal court's jurisdiction therefore can be invoked only when the plaintiff himself has suffered 'some threatened or actual injury resulting from the putatively illegal action . . . .' *Linda R. S. v. Richard D.*, 410 U.S. 614, 617, [93 S.Ct. 1146, 1148, 35 L.Ed.2d 536] (1973)." *Warth v. Seldin*, 422 U.S. at 499, 95 S.Ct. at 2205. This constitutional dimension of the standing requirement is sometimes described as a requirement that the plaintiff allege "injury in fact." *Schlesinger v. Reservists Committee to Stop the War*, 418 U.S. 208, 218, 94 S.Ct. 2925, 2930, 41 L.Ed.2d 706 (1974); *Ass'n of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150, 152, 90 S.Ct. 827, 829, 25 L.Ed.2d 184 (1970).

[5] Additionally, the courts have imposed standing limitations beyond those required by the Constitution. These prudential limitations arise from a concern that the courts not "be called upon to decide abstract questions of wide public significance even though other governmental institutions may be more competent to address the questions and even though judicial intervention may be unnecessary to protect individual rights." *Warth v. Seldin*, 422 U.S. at 500, 95 S.Ct. at 2206. Thus, the courts have held that when the alleged harm is a "generalized" or "abstract" grievance shared by a large class of citizens, jurisdiction will not be exercised. *See, e. g., Warth v. Seldin*, 422 U.S. at 499, 95 S.Ct. at 2205; *Schlesinger v. Reservists Committee to Stop the War; United States v. Richardson*, 418 U.S. 166, 94 S.Ct. 2940, 41 L.Ed.2d 678 (1974); *Ex Parte Levitt*, 302 U.S. 633, 58 S.Ct. 1, 82 L.Ed. 493 (1937).

[6] The case or controversy requirement applies to actions under the Declaratory Judgments Act, 28 U.S.C. § 2201. *Aetna Life Ins. Co. v. Haworth*, 300 U.S. 227, 240, 57 S.Ct. 461, 463, 81 L.Ed. 617 (1937); *Stewart v. M. M. & P. Pension Plan*, 608 F.2d 776, 782 (9th Cir. 1979). Thus, insofar as they are constitutionally mandated, the doctrines of standing and justiciability apply to actions for declaratory judgments. Further, the Declaratory Judgment Act applies only to cases of "actual controversies." Thus, "the question in each case is whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment." *Maryland Casualty Co. v. Pacific Coal & Oil Co.*, 312 U.S. 270, 273, 61 S.Ct. 510, 512, 85 L.Ed. 826 (1941). *See also Lake Carriers' Ass'n v. MacMullan*, 406 U.S. 498, 506, 92 S.Ct. 1749, 1755, 32 L.Ed.2d 257 (1972); *Stewart v. M. M. & P. Pension Plan.*

[7] Because standing and justiciability are limitations upon the exercise of the jurisdiction of the federal courts, we must consider these issues in regard to the various claims presented despite plaintiffs' contention that the justiciability issue is not properly before us. *Jenkins v. McKeithen*, 395 U.S. 411, 421, 89 S.Ct. 1843, 1848, 23 L.Ed.2d 404 (1969) (opinion of Marshall, J.); *City of South Lake Tahoe v. California Tahoe Regional Planning Agency*, 625 F.2d 231, 233 (9th Cir. 1980), *cert. denied*, — U.S. —, 101 S.Ct. 619, 66 L.Ed.2d 502 (1980).

III. *PROCEDURE AND PLEADING REQUIREMENTS*

[8] Before turning to plaintiffs' individual claims, we note that the task of determining whether the justiciability and standing requirements are satisfied

is somewhat complicated by the procedural posture of this case. On a motion to dismiss for failure to state a claim under Fed.R.Civ.P. 12(b)(6), the complaint must be construed in the light most favorable to the plaintiff. *Russell v. Landrieu*, 621 F.2d 1037, 1039 (9th Cir. 1980); *McKinney v. DeBord*, 507 F.2d 501 (9th Cir. 1974). Consequently, we generally assume the factual allegations to be true. *Brown v. Brown*, 368 F.2d 992, 993 (9th Cir. 1966). We do not, however, necessarily assume the truth of legal conclusions merely because they are cast in the form of factual allegations. *Hiland Dairy, Inc. v. Kroger Co.*, 402 F.2d 968 (8th Cir. 1968), *cert. denied*, 395 U.S. 961, 89 S.Ct. 2096, 23 L.Ed.2d 748 (1969); *Ogden River Water Users' Ass'n v. Weber Basin Water Conservancy*, 238 F.2d 936 (10th Cir. 1956).

[9] The liberal reading accorded complaints on 12(b)(6) motions is, moreover, subject to the requirement that the facts demonstrating standing must be clearly alleged in the complaint. *Jenkins v. McKeithen*, 395 U.S. at 422, 89 S.Ct. at 1849; *City of South Lake Tahoe v. California Tahoe Regional Planning Agency*, 625 F.2d at 237 n.7. We cannot construe the complaint so liberally as to extend our jurisdiction beyond its constitutional limits. With these considerations in mind, we turn to plaintiffs' claims.

IV. *SPECIFIC CLAIMS*

A. *Fourth Amendment Claim*

43 U.S.C. 1733(c)(1) grants the Secretary authority to enter into contracts with local officials for law enforcement on the public lands, and authorizes the officials or their agents to "search without warrant or process any person, place, or conveyance according to any Federal law or rule of law." Plaintiffs allege that § 1733(c)(1) violates their right to be protected against unreasonable searches and seizures, and they seek to have it declared unconstitutional.

[10-12] To satisfy the standing requirement, plaintiffs must allege some threatened or actual injury resulting from the application of the statute to them. *Linda R. S. v. Richard D.*, 410 U.S. at 617, 93 S.Ct. at 1148. The injury must be both "real" and "immediate." *O'Shea v. Littleton*, 414 U.S. 488, 494, 94 S.Ct. 669, 675, 38 L.Ed.2d 674 (1974). Plaintiffs have failed to allege that § 1733(c)(1) has been applied or threatened to be applied to them or anyone else, or that they have suffered any real or threatened injury at the hands of persons acting under the authority granted by the statute. Thus, plaintiffs[3] have no standing to challenge § 1733(c)(1).

B. *Vagueness Claims*

Plaintiffs challenge §§ 1732(b), 1740 and 1733(a) and (g) on the grounds that these statutes, taken together, constitute a criminal statute which is unconstitutionally vague. Section 1732(b) directs the Secretary of Interior to take any action to prevent unnecessary or undue degradation of the public lands he is

3. Plaintiffs Western Mining Council and its chapters make only one claim, discussed in Part IV.B., *infra*, that the Act injures them independently from the individual plaintiffs. With respect to all other claims asserted, the standing of these trade associations hinges upon the standing of their members. *See, e. g., Sierra Club v. Morton*, 405 U.S. 727, 92 S.Ct. 1361, 31 L.Ed.2d 636 (1972); *Warth v. Seldin*, 422 U.S. 490, 511, 95 S.Ct. 2197, 2211, 45 L.Ed.2d 343 (1975).

charged with managing.[4] Section 1733(a) directs the Secretary to issue regulations to implement the provisions of the Act, and provides for criminal penalties for violations of those regulations.[5] Section 1733(g) prohibits the use, occupancy or development of any portion of the public lands contrary to regulations or orders issued pursuant to regulations adopted by the Secretary or other responsible authority.[6] Finally, § 1740 directs the Secretary to promulgate rules and regulations to implement the Act, but provides that until such rules are promulgated, the lands shall be administered under existing regulations "to the extent practical."[7]

Plaintiffs interpret these statutes as meaning "that the defendant or his delegates has a free hand to make criminal any activity which the Secretary may choose to deem 'unnecessary or undue degradation of the lands' and such activity is made a crime before the Secretary or his delegate has even described it." On the basis of this interpretation, plaintiffs contend that these statutes are unconstitutionally vague.

[13] We are not required to accept plaintiffs' legal conclusion that these statutes authorize spontaneous criminal lawmaking. *Hiland Dairy, Inc. v. Kroger Co.* The language of § 1733(a) is clear in providing that the criminal penalties only attach to the violation of regulations lawfully issued pursuant to the Act. Section 1740 provides that the promulgation of the regulations is subject to the requirements of the Administrative Procedure Act,[8] 5 U.S.C. § 551, *et seq.*, which generally include notice of the proposed rule, opportunity to comment, and publication not less than 30 days before the rule takes effect. 5 U.S.C. § 553(b), (c), and (d). We, therefore, find no merit in plaintiffs' conclusion that the Act authorizes the Secretary or his delegates to render plaintiffs' activities criminal without prior notice.

The complaint also alleges that because the Secretary has "declared that digging

4. 43 U.S.C. § 1732(b) provides, in relevant part: "In managing the public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands."

5. 43 U.S.C. § 1733(a) provides, in part:

"The Secretary shall issue regulations necessary to implement the provisions of this Act with respect to the management, use, and protection of the public lands, including the property located thereon. Any person who knowingly and willfully violates any such regulation which is lawfully issued pursuant to this Act shall be fined no more than $1,000 or imprisoned no more than twelve months, or both. Any person charged with a violation of such regulation may be tried and sentenced by any United States magistrate designated for that purpose by the court by which he was appointed...."

6. 43 U.S.C. § 1733(g) provides:

"The use, occupancy, or development of any portion of the public lands contrary to any regulation of the Secretary or other responsible authority, or contrary to any order issued pursuant to any such regulation, is unlawful and prohibited."

7. 43 U.S.C. § 1740 provides, in part:

"The Secretary, with respect to the public lands, shall promulgate rules and regulations to carry out the purposes of this Act and of other laws applicable to the public lands, and the Secretary of Agriculture, with respect to lands within the National Forest System, shall promulgate rules and regulations to carry out the purposes of this Act.... Prior to the promulgation of such rules and regulations, such lands shall be administered under existing rules and regulations concerning such lands to the extent practical."

8. 43 U.S.C. § 1740 states, in relevant part:

"The promulgation of such rules and regulations shall be governed by the provisions of chapter 5 of title 5 [of the United States Code], without regard to section 553(a)(2)."

in the ground constitutes unnecessary or undue degradation of the lands," plaintiffs are prevented from engaging in mining and doing certain assessment work required to retain their mining claims, presumably because they fear prosecution under the allegedly vague provisions of the Act. Plaintiffs argue that litigants are not required to subject themselves to possible criminal prosecution before seeking relief from an allegedly unconstitutional statute where actual interference with protected rights is alleged. *Doe v. Bolton*, 410 U.S. 179, 93 S.Ct. 739, 35 L.Ed.2d 201 (1973).

In *Rincon Band of Mission Indians v. County of San Diego*, 495 F.2d 1 (9th Cir.), *cert. denied*, 419 U.S. 1008, 95 S.Ct. 328, 42 L.Ed.2d 283 (1974), this Court held that in an action for declaratory judgment, a general threat of enforcement, absent any arrests for violation of a county gambling ordinance, was "insufficient to meet the case or controversy requirements" of Art. III of the Constitution. The *Bolton* decision was distinguished on the grounds that it involved a history of prosecutions under the challenged statute, a circumstance which was not shown in *Rincon* and which is not alleged here.

[14] The Secretary's alleged statement that "plaintiffs cannot dig in the ground" is not a sufficiently specific threat of prosecution to confer standing upon plaintiffs. The statement, which is characterized neither as a regulation nor an order, presents at most a possibility that plaintiffs may eventually be prosecuted for violating regulations issued pursuant to the Act. Such a hypothetical threat is insufficient to satisfy either the "case or controversy requirement" of Art. III, § 2, or the "actual controversy" requirement of the Declaratory Judgment Act.

[15] The alleged inability of plaintiffs to mine their claims and do their assessment work appears to be the result of fears of prosecution based on their own patently erroneous interpretation of the Act. Plaintiffs cannot, however, create a justiciable case or controversy simply by misreading statutes and claiming as injury fears born of their own error.

Plaintiffs Western Mining Council and its chapters allege that the Act impairs the ability of their members to pay dues, and therefore threatens their existence as trade associations. This allegation is apparently based [9] upon the contention that the Act and the Secretary's purported statement prevent the members from mining their claims by placing them in fear of criminal prosecution. Because such fears are not reasonably attributable to either the Act or the Secretary's statement, the alleged injury suffered by the trade associations is not sufficient to give them standing. *Warth v. Seldin*, 422 U.S. at 511, 95 S.Ct. at 2211.

C. *Impairment of Contract*

Plaintiffs allege that, by virtue of the Mining Law of 1872,[10] the government offered to convey title to the mining claims upon plaintiffs' performance of certain conditions. Plaintiffs contend that by accepting that offer they entered

9. Because plaintiffs' complaint is extremely disjointed, conclusory, and vague, it is not possible to say with certainty which allegations are intended to support which constitutional attacks on the Act. Neither the courts nor the plaintiffs are well served by a complaint drafted in such a manner.

10. The Mining Law of 1872 is now codified at 30 U.S.C. §§ 22-24, 26-28, 29, 30, 33-35, 37, 39-42, and 47.

into "contracts" with the government, and that the 1976 Act violates the Fifth Amendment due process clause by imposing new burdens and conditions upon those contracts.[11]

Specifically, plaintiffs contend that §§ 1734(b), 1735(a), 1761–1764, and 1781(c) impermissibly impose new burdens and conditions upon their contracts with the government. Plaintiffs object to the provision of § 1734(b) which authorizes the Secretary to require a deposit of payments to reimburse the government for the reasonable costs of certain "special studies" relating to applications and other documents concerning the public lands. There is, however, no allegation that the Secretary has required or threatened to require any such deposits from any of the plaintiffs. Nor is there any allegation that § 1734(b) is exclusively applicable to owners of unpatented mining claims, or that the Act will necessarily be applied to plaintiffs. Thus, even if we assume, arguendo, that individual plaintiffs do have "contracts" with the government concerning their mining claims, those contracts will not necessarily be burdened by § 1734(b).

[16] The mere existence of a statute, which may or may not ever be applied to plaintiffs, is not sufficient to create a "case or controversy" within the meaning of Article III, *Jensen v. National Marine Fisheries Service (NOAA)*, 512 F.2d 1189, 1191 (9th Cir. 1975), and is thus insufficient to satisfy the "actual controversy" requirement of the Declaratory Judgment Act. Plaintiffs here have alleged nothing more.

[17] Sections 1735(a) and 1761 through 1764 are similarly not exclusively, or even primarily, applicable to owners of unpatented mining claims. The mere possibility that the Secretary may act in an arguably unconstitutional manner pursuant to one or more of those statutes is insufficient to establish the "real and substantial controversy" required to render a case justiciable under Article III. *See Poe v. Ullman.* Nor is such a possibility sufficient to meet the Article III standing requirement of "threatened or actual injury." *See Warth v. Seldin; O'Shea v. Littleton.*

Finally, plaintiffs allege that under § 1781(c), the "patents called for by plaintiffs' contracts will be burdened with added conditions, which the Secretary has been delegated authority to impose in his absolute discretion." Section 1781(c), by reference to a map, defines the "California Desert Conservation Area." Under § 1781(d), the Secretary is directed to "prepare and implement a comprehensive, long-range plan for the management, use, development, and protection of the public lands within the California Desert Conservation Area."

[18] In *Warth v. Seldin*, 422 U.S. at 518, 95 S.Ct. at 2215, the Supreme Court said: "It is the responsibility of the complainant clearly to allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute

11. Art. I, § 10, of the Constitution commands: "No State shall ... make any ... Law impairing the Obligation of Contracts ...." Although this clause does not, by its terms, apply to the federal government, the due process clause of the Fifth Amendment has been held in some instances to have a similar effect. *See, e. g., Lynch v. United States*, 292 U.S. 571, 54 S.Ct. 840, 78 L.Ed. 1434 (1934); *Shoshone Tribe of Indians v. United States*, 299 U.S. 476, 497, 57 S.Ct. 244, 251, 81 L.Ed. 360 (1937); *but see Lichter v. United States*, 334 U.S. 742, 68 S.Ct. 1294, 92 L.Ed. 1694 (1948).

and the exercise of the court's remedial powers." Plaintiffs have not alleged that the Secretary has, in fact, implemented or threatened to implement such a plan, and it is not at all clear that every possible plan which might be implemented under the Act would affect plaintiffs' mining claims. Thus, plaintiffs again fall short of satisfying the requirements of Art. III, because they have again failed to allege any actual or threatened injury.[12]

D. *Substantive Due Process Claim*

Sections 1744(a) and (b) set forth requirements that owners of unpatented mining claims file for record with the Bureau of Land Management, and certain other offices, various documents relating to intentions to retain mining claims, performance of assessment work and descriptions of the location of the claims.[13] Section 1744(c) provides that failure to comply with these requirements "shall be deemed conclusively to constitute an abandonment of the mining claim."[14] Plaintiffs allege that the filing requirements of § 1744 are unreasonable and arbitrary, and that the § 1744(c) conclusive presumption of abandonment is a "forfeiture statute with 'Due Process,'" which is unreasonably harsh.

Unlike the other challenged provisions of the Act, the filing requirements of § 1744 necessarily and of their own force apply to the individual plaintiffs here. Section 1744(c) leaves the Secretary no discretion, requiring that the claims be conclusively deemed abandoned when the filing provisions are not met. The legislative history indicates that a claim which is "deemed abandoned" is "extinguished." H.R.Rep.No.94–1724, 94th Cong., 2nd Sess. 62, *reprinted in* [1976] U.S.Code Cong. & Ad.News 6175, 6233.

[19] Thus, if the individual plaintiffs here fail to file, they will lose their interests in their unpatented mining claims. Because an unpatented mining claim is a unique form of property which created in the owners a possessory interest in the land, *Best v. Humboldt Placer Mining*

12. We do not reach the questions of whether plaintiffs do, in fact, have "contracts" with the Government under the Mining Law of 1872, or, if so, whether the Act would impose impermissible burdens on such contracts if applied to plaintiffs.

13. 43 U.S.C. § 1744(a) requires owners of unpatented mining claims to file either a notice of intention to hold the mining claim, an affidavit of assessment work, or a detailed report provided in 30 U.S.C. § 28–1, in the office where the location notice or certificate is recorded. This section also requires that a copy of such instrument be filed in the office of Bureau of Land Management, designated by the Secretary with a description of the location of the mining claim. For claims located before the effective date of the Act, October 21, 1976, these instruments were required to be filed by October 21, 1979, and prior to December 31 of each year thereafter. For claims located after October 21, 1976, the claims must be recorded prior to December 31 of each year following the calendar year in which the claim was located.

43 U.S.C. § 1744(b) sets forth additional requirements that a copy of the official record of the notice of location or certificate of location be filed in the office of the Bureau of Land Management designated by the Secretary. This is a one time filing which was required to be made by October 21, 1979 for those claims located before the effective date of the Act, and within ninety days after the location of claims occurring after October 21, 1976.

14. 43 U.S.C. § 1744(c) limits the applicability of the conclusive presumption of abandonment for failure to file by providing that "it shall not be considered a failure to file if the instrument is defective or not timely filed for record under other Federal laws permitting filing or recording thereof, or if the instrument is filed . . . on behalf of some but not all of the owners of the mining claim . . ."

Co., 371 U.S. 334, 335–36, 83 S.Ct. 379, 381–382, 9 L.Ed.2d 350 (1963), the loss of such an interest would constitute a substantial injury. We believe that the allegations in this regard indicate a sufficiently real and immediate threat of injury to give rise to a justiciable, actual controversy,[15] and present a sufficiently immediate threat of injury to the individual plaintiffs to give them standing to challenge these provisions.[16]

[20, 21] Nonetheless, plaintiffs' allegations that the filing requirements are arbitrary and unreasonable are not sufficient to state a claim upon which relief can be granted. Although statutes which are "clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, morals, or general welfare" violate the Fifth Amendment's due process clause, *Euclid, Ohio v. Ambler Realty Co.*, 272 U.S. 365, 395, 47 S.Ct. 114, 121, 71 L.Ed. 303 (1926),[17] the assertion that the filing requirements are arbitrary and unreasonable is an erroneous legal conclusion which we are not obliged to accept as true for purposes of ruling on a 12(b)(6) motion. *Hiland Dairy v. Kroger.*

The reasonableness of the provisions of § 1744(a) and (b) was considered and affirmed in *Topaz Beryllium Co. v. United States*, 479 F.Supp. 309 (D. Utah 1979). That case set out in detail the legislative history of § 1744. Of particular relevance is a discussion in the Senate's report explaining the need for a federal "recordation" requirement and delineating the purpose of the statute:

> "Although the Committee considered . . . proposals [to completely amend the Mining Law] to be beyond the scope of S. 507, as ordered reported, the Committee did address a particular procedural problem concerning the registration of mining claims—a problem which is particularly frustrating to the public land manager. The source of this problem is what is often termed 'stale claims.' There is no provision in the 1872 Mining Law, as amended, requiring notice to the Federal government by a mining claimant of the location of his claim. The Mining Law only required compliance with local recording requirements, which usually means simply an entry in the general county land records. Consequently, Federal land managers do not have an easy way of discovering which Federal lands are subject to either valid or invalid mining claim locations. According to some estimates, there are presently more than 6,000,000 unpatented

15. The fact that the application of the § 1744(c) presumption of abandonment for failure to file is nondiscretionary distinguishes this case from *Jensen v. National Marine Fisheries Service (NOAA)*, 512 F.2d 1189, 1191 (9th Cir. 1975). In that case, we held that the mere existence of statutes delegating power to the President does not suffice to create a "case or controversy" where there is no actual injury alleged and the only threatened injury consists of the "mere possibility" of prosecution. Here the mandatory application of the § 1744(c) presumption of abandonment upon failure to comply with § 1744(a) and (b) combined with plaintiffs' unwillingness to comply renders the threatened injury highly probable.

16. The finding of standing for the individual plaintiffs permits us to reach the question of whether the allegations are otherwise sufficient to state a claim upon which relief can be granted under Fed.R.Civ.P. 12(b)(6). Because we conclude that they are not, we need not reach the question of whether plaintiffs Western Mining Council and its chapters also have standing to assert the same claim.

17. *See also Moore v. East Cleveland*, 431 U.S. 494, 97 S.Ct. 1932, 52 L.Ed.2d 531 (1977); *United States v. Carolene Products Co.*, 304 U.S. 144, 58 S.Ct. 778, 82 L.Ed. 1234 (1938).

claims in the public lands, excluding national forests, and more than half of the units of the National Forest System are reputedly covered by mining claims. Of course, the vast majority of these claims will never be pursued, and do not directly interfere with land management. They do, however, create significant uncertainty regarding the actual extent of valid locations. Furthermore, as unpatented mining locations can be bought and sold, they have become the basis for many unauthorized occupancies on the public lands. These claims constitute a cloud on the title of a large portion of the Federal lands.

"Subsection (a) would establish the recording system so necessary for Federal land planners and managers. It would require that all mining claims under the 1872 Mining Law, as amended, be recorded by the claimants with the Secretary within two years after the enactment of S. 507, as ordered reported, or within 30 days of the location of the claim, whichever is later. Any claim not recorded is to be conclusively presumed abandoned and will be void.

"This recording requirement is not intended to supersede nor displace the existing recording requirements under State law. As such, its purpose is to advise the Federal land managing agency, as proprietor, of the existence of mining claims. The agency is not intended to be the official recording office for all ancillary documents (i. e., wills, mechanic's liens, conveyances, tax liens, court judgments, etc.). The county public records would remain, as before, the official repository of such recorded documents. S.Rep.No.94-583, 94th Cong. 2nd Sess. at 64, 65 (1975)." *Id.* at 313. (Emphasis omitted.)

[22] The *Topaz* opinion noted that in addition to terminating dormant and unpursued mining claims, the purposes of the Act include land use planning and management, the identification of lands subject to valid locations and invalid locations, and the identification of unauthorized occupancies. The legislative history of § 1744 makes it clear that on their face the filing requirements are neither an arbitrary nor irrational way of realizing these permissible governmental objectives, and we reject plaintiffs' conclusion to the contrary.

Similarly, we reject plaintiffs' conclusion that the provisions of § 1744(c) are unreasonably harsh in requiring that mining claims be conclusively presumed to be abandoned upon failure to file. As noted by the *Topaz* court, this requirement "fairly frees up the public domain from dormant and antiquated claims in which no one expresses a current and ongoing interest." 479 F.Supp. at 315. The purpose is clearly not to impose a penalty for tardiness in filing, as plaintiffs allege, but simply to free the public lands from stale claims in order to permit sound land use planning and management.[18]

E. *Procedural Due Process Claim*

The complaint also contains an allegation that the Secretary has interpreted 43 U.S.C. § 1744 as authorizing the denial of procedural due process. This assertion is

18. We venture no opinion as to notice requirements or other questions which may arise in connection with any particular application or enforcement of these provisions. Plaintiffs have challenged a regulation concerning notice but lack standing to pursue this attack at this time. *See* Part II E., *infra*.

based upon a regulation which provides that owners of claims who have not complied with the filing requirements of § 1744 and certain implementing regulations [19] shall not be personally served with notice of actions or contests affecting their claims, and will nonetheless be bound by such contest proceedings. 43 C.F.R. § 3833.5(d) (1979). The same regulation, however, also states: "This section applies to all unpatented mining claims, mill or tunnel sites *located after October 21, 1976, and shall apply to such claims or sites located on or before October 21, 1976, only after they have been recorded pursuant to § 3833.1-2 of this title.*" 43 C.F.R. § 3833.5(d). (Emphasis added.)

[23] The complaint nowhere alleges that any of the plaintiffs have unpatented mining claims located after October 21, 1976. Nor does it allege that they have filed or recorded any of their claims located on or before October 21, 1976. Thus, plaintiffs' allegations are insufficient to show that 43 C.F.R. § 3833.5(d) has been or will ever be applied to them, and they are, therefore, without standing to challenge that regulation.

F. *Article IV, Section 3, Claims*

The Act declares that it is the policy of the United States to retain the public lands in federal ownership unless it is determined through land use planning procedures that disposal of a particular parcel will serve the national interest. 43 U.S.C. § 1701(a)(1). Plaintiffs allege that some states contain less public land than does California, and contend that the retention policy, therefore, violates Art. IV, § 3, of the Constitution,[20] which they interpret as a blanket guarantee that "all states shall be dealt with equally by the federal government." Plaintiffs further claim that the retention policy injures them as state taxpayers because it restricts California's tax base, causing an increase in the amount of taxes which plaintiffs have to pay.

Section 1701(a)(13) provides that it is the policy of the United States that the federal government should, on a basis equitable to both the federal and local taxpayers, provide for payments to compensate states and local governments for burdens created as a result of the immunity of federal lands from state and local taxation. Plaintiffs contend that this section also violates Art. IV, § 3, on the grounds that it is a "dubious unilateral method of evading the compact made with the states upon their admission."

Plaintiffs allege that they are both federal and state taxpayers as well as citizens. We, therefore, analyze their standing to challenge these provisions in each of these capacities.

In *Flast v. Cohen*, 392 U.S. 83, 88 S.Ct. 1942, 20 L.Ed.2d 947 (1968), the Supreme Court held that federal taxpayers have standing to challenge federal statutes

19. *See* 43 C.F.R. §§ 3833.1-2 and 3833.1-3 (1979).

20. Art. IV, § 3, of the Constitution provides:
"New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the Jurisdiction of any other State; nor any State be formed by the Junction of two or more States, or parts of States, without the Consent of the Legislatures of the States concerned as well as of the Congress.
"The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States; and nothing in this Constitution shall be so construed as to Prejudice any Claims of the United States, or of any particular State."

only if certain "nexus" requirements are met:

> "The nexus demanded of federal taxpayers has two aspects to it. First, the taxpayer must establish a logical link between that status and the type of legislative enactment attacked. Thus, a taxpayer will be a proper party to allege the unconstitutionality only of exercises of congressional power under the taxing and spending clause of Art. I, § 8, of the Constitution. It will not be sufficient to allege an incidental expenditure of tax funds in the administration of an essentially regulatory statute. This requirement is consistent with the limitation imposed upon state-taxpayer standing in federal courts in *Doremus v. Board of Education*, 342 U.S. 429, [72 S.Ct. 394, 96 L.Ed. 475] (1952). Secondly, the taxpayer must establish a nexus between that status and the precise nature of the constitutional infringement alleged. Under this requirement, the taxpayer must show that the challenged enactment exceeds specific constitutional limitations imposed upon the exercise of the congressional taxing and spending power and not simply that the enactment is generally beyond the powers delegated to Congress by Art. I, § 8. When both nexuses are established, the litigant will have shown a taxpayer's stake in the outcome of the controversy and will be a proper and appropriate party to invoke a federal court's jurisdiction." *Id.* at 102–03, 88 S.Ct. at 1953–1954.

Plaintiffs have failed to meet these nexus requirements. The provisions of § 1701(a)(1) and (13) are simply declarations of policy. In themselves, they impose no taxes and expend no funds. They can, therefore, be said to be exercises of the taxing and spending power, if at all, only in the more tenuous sense. Further, plaintiffs do not even assert that these sections of the Act injure them as federal taxpayers, but instead contend that they are injured as state taxpayers. Plaintiffs have, therefore, not established the required nexus between the claim asserted and their status as federal taxpayers.

[24] Similarly, the complaint is insufficient to satisfy *Flast's* second requirement, because it contains no allegations that these provisions of the Act exceed a specific constitutional limitation on the congressional taxing and spending power. Not every provision of the Constitution which directs or prohibits some action by Congress constitutes a sufficiently specific limitation on the Art. I, § 8, taxing and spending power. In *United States v. Richardson*, 418 U.S. 166, 94 S.Ct. 2940, 41 L.Ed.2d 678, for example, plaintiffs challenged certain provisions of the Central Intelligence Agency Act relating to accounting statements on the grounds that they violated the constitutional mandate that a "regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time." Art. I, § 9. The Supreme Court held that this provision did not constitute a specific limitation upon the exercise of the spending or taxing powers. 418 U.S. at 175, 94 S.Ct. at 2945. Similarly, in *Frissell v. Rizzo*, 597 F.2d 840, 850 (3d Cir.), *cert. denied*, 444 U.S. 841, 100 S.Ct. 82, 62 L.Ed.2d 54 (1979), the Third Circuit held that "[i]n the wake of the *Richardson* holding the claim that the general First Amendment guarantees of free press and free speech fall within the class of specific limitations satisfying the *Flast* test is without merit."

[25, 26] We hold that the provisions of Art. IV, § 3, are not specific limitations upon the congressional taxing and spending power and, therefore, that plaintiffs have failed to satisfy the second nexus requirement of *Flast v. Cohen*. Thus, plaintiffs do not have standing as federal taxpayers to challenge the constitutionality of § 1701(a)(1) or (13).

[27] Nor does plaintiffs' status as state taxpayers give them standing to challenge the federal retention and reimbursement policies of § 1701(a)(1) and (13). Even in the context of challenges to state statutes, state taxpayers seeking standing in federal court must show some "measurable appropriation or disbursement of . . . funds occasioned solely by the activities complained of." *Doremus v. Board of Education*, 342 U.S. at 434, 72 S.Ct. at 397; *Everson v. Board of Education*, 330 U.S. 1, 67 S.Ct. 504, 91 L.Ed. 711 (1947). The provisions of § 1701(a)(1) and (13), however, are simply declarations of policy. They are not in themselves appropriations or disbursements of money.

[28] In the instant context of a state taxpayer challenge to federal statutes, the policies of the standing doctrine demand that plaintiffs allege some injury which is more definite and individual than the higher state taxes allegedly suffered here. Apparently as a prudential matter,[21] the Supreme Court has held that "when the asserted harm is a 'generalized grievance' shared in substantially equal measure by all or a large class of citizens, that harm alone normally does not warrant exercise of jurisdiction." *Warth v. Seldin*, 422 U.S. at 499, 95 S.Ct. at 2205; *citing Schlesinger v. Reservists Committee to Stop the War; United States v. Richardson; Ex Parte Levitt*, 302 U.S. at 634, 58 S.Ct. at 1. *Accord, Duke Power Co. v. Carolina Environmental Study Group*, 438 U.S. 59, 80, 98 S.Ct. 2620, 2634, 57 L.Ed.2d 595 (1978). Similarly, in *Flast v. Cohen*, the court noted that standing requirements exist so that courts will not be asked to adjudicate "generalized grievances about the conduct of government or the allocation of power in the Federal System." 392 U.S. at 106, 88 S.Ct. at 1956.

[29, 30] The increase in state taxes allegedly suffered by plaintiffs is at best a highly generalized injury. A great many federal statutes potentially affect the level of state taxes. Here, plaintiffs' interest in the effect of the retention and reimbursement policies on state taxes is shared in somewhat differing degrees by the taxpayers of all states which contain public lands. We hold that this interest is insufficient to give plaintiffs standing to challenge the constitutionality of § 1701(a)(1) and (13). We do not sit to pass judgment on congressional declarations of policy which affect plaintiffs only in an attenuated and generalized way. Plaintiffs must look to the legislative branch for redress of such generalized grievances.

C. *Article I, Section 8, Claim*

The Act permits the Secretary to contract with local officials for law enforce-

21. In *City of South Lake Tahoe v. California Tahoe Regional Planning Agency*, 625 F.2d 231, 235 (9th Cir.), *cert. denied*, — U.S. —, 101 S.Ct. 619, 66 L.Ed.2d 502 (1980), this Court noted that it is not entirely clear whether the "abstract injury" and taxpayer standing bars are prudential or constitutional, although more recent decisions have referred to them as prudential. *See, e. g., Warth v. Seldin*, 422 U.S. 490, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975), and *Duke Power Co. v. Carolina Environmental Study Group, Inc.*, 438 U.S. 59, 98 S.Ct. 2620, 57 L.Ed.2d 595 (1978).

ment services on the public lands, and to provide law enforcement training so that the contractual responsibilities may be met. 43 U.S.C. § 1733(c)(1).[22] Section 1733(c)(2)[23] states that the Secretary may authorize federal personnel or appropriate local officials to carry out his law enforcement responsibilities, and provides for those officials to receive the training described in § 1733(c)(1). Section 1733(e)[24] allows the Secretary to establish a uniformed desert ranger force in the California Desert Conservation Area for the purposes of enforcing federal laws and regulations relating to the public lands.

Plaintiffs allege that these sections fall within the ambit of Art. I, § 8, cl. 12, of the Constitution, which grants Congress power "[t]o raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years." Plaintiffs apparently make the highly suspect assumption that the desert ranger force referred to in § 1733(e) and the law enforcement personnel referred to in § 1733(c) constitute "Armies" within the meaning of Art. I, § 8, cl. 12, and conclude that because the Act allegedly contains appropriations which are "unlimited," the Act runs afoul of the two year constitutional limitation on appropriations for armies.

The complaint fails to specify which sections of the Act contain these allegedly "unlimited appropriations." However, the Act does contain at least one appro-

22. 43 U.S.C. § 1733(c)(1) provides:

"When the Secretary determines that assistance is necessary in enforcing Federal laws and regulations relating to the public lands or their resources he shall offer a contract to appropriate local officials having law enforcement authority within their respective jurisdictions with the view of achieving maximum feasible reliance upon local law enforcement officials in enforcing such laws and regulations. The Secretary shall negotiate on reasonable terms with such officials who have authority to enter into such contracts to enforce such Federal laws and regulations. In the performance of their duties under such contracts such officials and their agents are authorized to carry firearms; execute and serve any warrant or other process issued by a court or officer of competent jurisdiction; make arrests without warrant or process for a misdemeanor he has reasonable grounds to believe is being committed in his presence or view, or for a felony if he has reasonable grounds to believe that the person to be arrested has committed or is committing such felony; search without warrant or process any person, place, or conveyance according to any Federal law or rule of law; and seize without warrant or process any evidentiary item as provided by Federal law. The Secretary shall provide such law enforcement training as he deems necessary in order to carry out the contracted for responsibilities. While exercising the powers and authorities provided by such contract pursuant to this section, such law enforcement officials and their agents shall have all the immunities of Federal law enforcement officials."

23. 43 U.S.C. § 1733(c)(2) provides:

"The Secretary may authorize Federal personnel or appropriate local officials to carry out his law enforcement responsibilities with respect to the public lands and their resources. Such designated personnel shall receive the training and have the responsibilities and authority provided for in paragraph (1) of this subsection."

24. 43 U.S.C. § 1733(e) provides:

"Nothing in this section shall prevent the Secretary from promptly establishing a uniformed desert ranger force in the California Desert Conservation Area established pursuant to section 1781 of this title for the purpose of enforcing Federal laws and regulations relating to the public lands and resources managed by him in such area. The officers and members of such ranger force shall have the same responsibilities and authority as provided for in paragraph (1) of subsection (c) of this section."

priation authorization in § 1781(j),[25] which extends through four years and which is designated in part for a program of law enforcement in the California Desert Conservation Area under § 1781(h).

Thus, with regard to this claim, plaintiffs appear to have satisfied the literal terms of the *Flast* nexus requirements for taxpayer standing, inasmuch as they have challenged a congressional exercise of the spending power and have alleged that the Act violates the specific limitation on that power contained in Art. I, § 8, cl. 12.

[31] Nonetheless, plaintiffs have failed to state a cognizable claim. It is clear that the Art. I, § 8, cl. 12, limitation on appropriations for "Armies" does not apply to every type of "armed force," as plaintiffs allege. For example, no such limitations are attached to the separate grants of power to Congress to provide and maintain a navy and to organize, arm, and discipline a militia. Art. I, § 8, cls. 13, 16.

[32] The inclusion of the two year appropriations limitation in Art. IV, § 8, cl. 12, resulted from the concern of the framers of the Constitution that a standing army might be detrimental to liberty. *See Kinsella v. United States ex rel. Singleton*, 361 U.S. 234, 268, 80 S.Ct. 297, 321, 4 L.Ed.2d 268 (1960); Prescott, Drafting the Federal Constitution 515–525 (1941); 5 Elliot's Debates 443–445. We perceive no equivalent danger from a ranger force or law enforcement personnel engaged in routine law enforcement activities on the federal lands, and conclude that they may not fairly be characterized as "Armies." Thus, Art. I, § 8, cl. 12, is inapplicable to the challenged sections of the Act, and plaintiffs' allegations do not state a claim upon which relief can be granted.[26]

V. *CONCLUSION*

The allegations in support of plaintiffs' various claims are either insufficient to satisfy the justiciability and standing requirements or inadequate to state a claim upon which relief can be granted. We, therefore, affirm the District Court's dismissal of the complaint with prejudice.

AFFIRMED.

25. 43 U.S.C. § 1781(j) provides:

"There are authorized to be appropriated for fiscal years 1977 through 1981 not to exceed $40,000,000 for the purpose of this section, such amount to remain available until expended."

26. We need not determine the standing of plaintiffs Western Mining Council and its chapters to assert this claim. *See* n. 16, *supra*.

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No. 81-130

In the Supreme Court of the United States

OCTOBER TERM, 1981

WESTERN MINING COUNCIL, ET AL., PETITIONERS

v.

JAMES G. WATT, SECRETARY OF INTERIOR
OF THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether petitioners have standing to challenge the constitutionality of statutes authorizing the promulgation of regulations and providing criminal penalties for violations of those regulations, even though petitioners did not allege that prosecutions had been initiated or threatened or that regulations applicable to them had been promulgated.

2. Whether a court must accept as true legal conclusions contained in a complaint when ruling upon a motion to dismiss for failure to state a claim upon which relief can be granted.

3. Whether petitioners have standing to assert that certain portions of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 *et seq.*, violate the Due Process Clause by altering preexisting contract rights.

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In the Supreme Court of the United States

OCTOBER TERM, 1981

No. 81-130

WESTERN MINING COUNCIL, ET AL., PETITIONERS

v.

JAMES G. WATT, SECRETARY OF INTERIOR
OF THE UNITED STATES

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

ORDER AND OPINION BELOW

The order of the district court dismissing petitioners' complaint with leave to amend (Pet. App. A-64) and the subsequent judgment of dismissal with prejudice (Pet. App. A-65) are unreported. The opinion of the court of appeals (Pet. App. A-66 to A-84) is reported at 643 F. 2d 618.

JURISDICTION

The opinion of the court of appeals affirming the district court's judgment (Pet. App. A-66 to A-84) was entered on April 23, 1981. The petition for a writ of certiorari was filed on July 20, 1981. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Western Mining Council,[1] several of its chapters, and individuals who mine and own unpatented mining claims[2] brought suit against the Secretary of the Interior in the United States District Court for the Eastern District of California challenging the constitutionality of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1701 *et seq.* The district court dismissed the action for failure to state a claim upon which relief could be granted (Pet. App. A-64), and the court of appeals affirmed (Pet. App. A-66 to A-84).

2. The Federal Land Policy and Management Act of 1976 serves as the "organic act" for the Bureau of Land Management of the United States Department of the Interior. See H.R. Conf. Rep. No. 94-1724, 94th Cong., 2d Sess. 57 (1976). It defines certain goals for the Bureau in its administration of the public lands of the United States and establishes methods of land use planning and management.

Petitioners filed this action in 1977 seeking a declaratory judgment that FLPMA was unconstitutional in whole or in part[3] (Pet. App. A-10). They also sought to enjoin the Secretary of the Interior from expending certain funds for enforcement of the Act (*ibid.*). They alleged, among other things, that the Act violated the Fourth, Fifth, and Sixth

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[1]According to the complaint, the Western Mining Council and its chapters are "non-profit trade associations whose members are miners and owners of unpatented mining claims and interests therein" (Pet. App. A-2).

[2]The use of the unpatented mining claims located under the mining laws of the United States is regulated by 30 U.S.C. 612.

[3]The specific provisions challenged were Sections 102(a)(1), 102(a)(13), 302(b), 303(a), 303(c), 303(e), 303(g), 304(b), 305(a), 310, 314, 501-504, and 601(c) of FLPMA, 43 U.S.C. 1701(a)(1), 1701(a)(13), 1732(b), 1733(a), 1733(c), 1733(e), 1733(g), 1734(b), 1735(a), 1740, 1744, 1761-1764, and 1781(c).

Amendments; the provisions of Article IV, Section 3, paragraph 2 empowering Congress to dispose of federal property and to make necessary rules and regulations concerning such property; and the two-year limitation upon appropriations for armies contained in Article I, Section 8, paragraph 12. The individual plaintiffs alleged that the Act injured them by infringing upon their contractual rights as owners of unpatented mining claims located prior to passage of the Act, by infringing upon their right to mine their claims, by exposing them to unlawful searches and seizures, by placing them in jeopardy of prosecution under unconstitutionally vague criminal statutes, by injuring them as federal and state taxpayers, and by denying their right to due process (Pet. App. A-5 to A-10). The Western Mining Council and its chapters claimed injury due to the alleged impairment of their members' ability to pay dues (*id.* at A-2).

Holding that the plaintiffs had "failed to state a justiciable claim" (Pet. App. A-64), the district court granted the Secretary's motion to dismiss the complaint for failure to state a claim upon which relief could be granted (*ibid.*) but gave the plaintiffs leave to amend their complaint (*ibid.*). When they failed to do so, the court dismissed the action with prejudice (Pet. App. A-65).

3. The court of appeals affirmed (Pet. App. A-66 to A-84). It held that plaintiffs lacked standing to assert the majority of their claims, since they had not alleged any actual or threatened injury resulting from the relevant provisions of the FLPMA (*id.* at A-73 to A-77, A-79 to A-82), and that their remaining claims were based upon erroneous interpretations of the law and had thus been correctly dismissed (*id.* at A-77 to A-79, A-82 to A-84).

The disposition of two of petitioners' claims is especially pertinent for present purposes. Petitioners claimed that 43 U.S.C. 1732(b), 1733(a) and (g), and 1740 constituted an

unconstitutionally vague criminal statute (Pet. App. A-6 to A-8). Section 1732(b) directs the Secretary of the Interior to "take any action necessary to prevent unnecessary or undue degradation of [public] lands"; Section 1733(a) directs the Secretary to issue regulations implementing the Act and provides criminal penalties for violations of those regulations; Section 1733(g) prohibits the "use, occupancy, or development" of public lands contrary to regulations or orders issued pursuant to those regulations and Section 1740 directs the Secretary to issue regulations implementing the Act and provides that the public lands be administered under existing rules to the extent possible until the Secretary promulgates new ones.

Petitioners' complaint interpreted these provisions to mean that "the [Secretary] or his delegates has (*sic*) a free hand to make criminal any activity which [he] may choose to deem 'unnecessary or undue degradation of the lands[']" and to make such activity a crime "before [he] or his delegate[] has even described it" (Pet. App. A-7). Petitioners claimed that these provisions were therefore unconstitutionally vague (*id.* at A-7 to A-8). Petitioners alleged that they were threatened with prosecution under those provisions because former Secretary of the Interior Cecil Andrus had said that they could not "dig in the ground" (*id.* at A-3). The complaint paraphrased this alleged statement, rather than providing a direct quotation, and did not specify when or where the alleged statement had been made or had appeared.

The court of appeals rejected petitioners' legal conclusion that the statutes in question authorized spontaneous criminal lawmaking, noting that criminal penalties could be imposed only for the violation of a lawful regulation promulgated in the manner prescribed by the Administrative Procedure Act, 5 U.S.C. 551 *et seq.* (Pet. App. A-74). The court further held that the statement allegedly made by

former Secretary Andrus was "not a sufficiently specific threat of prosecution to confer standing upon plaintiffs" (Pet. App. A-75).

Petitioners also claimed that certain provisions of the FLPMA altered "contracts" they had made with the government, pursuant to the Mining Law of 1872, when they began mining their claims (Pet. App. A-5 to A-6). Petitioners alleged that under that law, the government had offered to convey title to mining claims upon the performance of certain conditions (*ibid.*). By adding additional conditions, petitioners contended, the contracts were altered, in violation of the Due Process Clause (*ibid.*).

The court of appeals held that petitioners lacked standing to assert this claim because they had failed to allege that the provisions in question were exclusively applicable to owners of unpatented mining claims or that any action against them pursuant to those provisions had been taken or threatened (Pet. App. A-76 to A-77).

ARGUMENT

Petitioners maintain that the decision below conflicts with various decisions of this Court. In fact, however, there is no conflict. The court of appeals correctly applied settled legal principles in upholding the dismissal of petitioners' claims, and there is thus no occasion for further review by this Court.

1. Petitioners argue (Pet. 9-12) that the decision of the court of appeals conflicts with *Doe* v. *Bolton*, 410 U.S. 179 (1973), in which it was held that physicians had standing to challenge the constitutionality of statutes regulating abortions, even though the physicians had not been prosecuted under those laws or threatened with prosecution. Although the petition does not make it clear, this argument apparently relates to the dismissal of petitioners' claim that certain provisions of the FLMPA constitute an unconstitutionally vague criminal statute (see Pet. App. A-75).

Petitioners' argument fails for at least two reasons. First, the court below upheld the dismissal of their claim, not only because they lacked standing, but also because the statutes in question were not unconstitutionally vague (Pet. App. A-74 to A-75). Petitioners apparently do not seek review of that decision.

Second, the situation of the physicians in *Doe* v. *Bolton*, *supra*, is not at all comparable to petitioners'. The physicians were found to have asserted "a sufficiently direct threat of personal detriment" (410 U.S. at 188), because they were the persons "against whom these criminal statutes directly operate[d]" (*ibid.*) and because the state had a history of prosecutions under similar statutes (*id.* at 188-189). Here, by contrast, petitioners merely speculated that regulations would be promulgated, that the regulations would apply to them, that some of their present activities would be proscribed, and that they might therefore be prosecuted. The court of appeals properly held that petitioners could not assert their claim, for, as stated in *O'Shea* v. *Littleton*, 414 U.S. 488, 494 (1974), in order to establish standing

> [i]t must be alleged that the plaintiff "has sustained or is immediately in danger of sustaining some direct injury" as the result of the challenged statute or official conduct. *Massachusetts* v. *Mellon*, 262 U.S. 447, 448 (1923). The injury or threat of injury must be both "real and immediate," not "conjectural" or "hypothetical." *Golden* v. *Zwickler*, 394 U.S. 103, 109-110 (1969); *Maryland Casualty Co.* v. *Pacific Coal & Oil Co.*, 312 U.S. 270, 273 (1941); *United Public Workers* v. *Mitchell*, 330 U.S. 75, 89-91 (1947).

The threat of injury to petitioners was not real and immediate, but pure conjecture. Standing was consequently lacking.

For similar reasons, the decision below does not conflict with *Abbott Laboratories* v. *Gardner*, 387 U.S. 136 (1967), as petitioners claim (Pet. 24). In *Abbott*, which concerned the issue of "ripeness" rather than standing, drug companies and a manufacturers' association sought pre-enforcement review of certain regulations. This Court held that "a controversy 'ripe' for judicial resolution" (387 U.S. at 148) was presented because the applicability of the regulations to the companies was clear-cut; the regulations would be effective immediately upon publication; immediate compliance was expected; compliance would be costly; and noncompliance would subject the companies to serious civil and criminal penalties (*id.* at 152-153). Here, by contrast, it was not even alleged that regulations had been drafted or proposed, and obviously, therefore, both their applicability to petitioners and their content were unknown.

2. Petitioners maintain (Pet. 22-24) that the court below erred in refusing to accept the truth of the legal conclusions contained in their complaint. Again, although the petition is unclear, this argument apparently relates primarily to petitioners' challenge to portions of the FLMPA on vagueness grounds (see Pet. App. A-74). As noted, petitioners' complaint construed those provisions as authorizing the Secretary to make conduct criminal "before the Secretary or his delegate has even described it" (*id.* at A-7). The court of appeals rejected that interpretation of the law (*id.* at A-74), but petitioners contend that the court was bound to accept the construction contained in their complaint in ruling upon a motion to dismiss for failure to state a claim upon which relief can be granted.

Petitioners' argument is clearly incorrect. While well-pleaded and material factual allegations in the complaint must be accepted in ruling upon a motion to dismiss for failure to state a claim upon which relief can be granted (see, *e.g.*, *Jenkins* v. *McKeithen*, 395 U.S. 411, 421 (1969);

Walker Process Equipment, Inc. v. *Food Machinery & Chemical Corp.*, 382 U.S. 172, 174-175 (1965)), conclusions of law need not be. *Mitchell* v. *Archibald & Kendall, Inc.*, 573 F. 2d 429, 432 (7th Cir. 1978); *Hiland Dairy, Inc.* v. *Kroger Co.*, 402 F. 2d 968, 973 (8th Cir. 1968), cert. denied, 395 U.S. 961 (1969); *Ogden River Water Users' Association* v. *Weber Basin Water Conservancy*, 238 F. 2d 936, 940 (10th Cir. 1956); 2A *Moore's Federal Practice* para. 12.08 at 2266-2269 (1981). If petitioners' argument were correct, then plaintiffs could prevent the dismissal of legally unsound claims simply by alleging patently incorrect legal conclusions to support those claims.

Although petitioners invoke (Pet. 22-24) *United States* v. *Mississippi*, 380 U.S. 128 (1965), and *United States* v. *Employing Plasterers Association*, 347 U.S. 186 (1954), in those cases this Court was clearly referring to factual allegations, not matters of law.[4]

3. Finally, petitioners contend (Pet. 25-26) that the court below erred in upholding the dismissal of their claim that certain provisions[5] of the FLMPA altered preexisting contract rights. The court of appeals discussed each of the

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[4]In *United States* v. *Mississippi*, *supra*, 380 U.S. at 143, this Court stated that "the allegations of the complaint are to be taken as true," but the allegations in questions were factual, *viz.*, that Mississippi had practiced racial discrimination in the area of voting for many years (*id.* at 143-144).

In *United States* v. *Employing Plasterers Association*, 347 U.S. 186 (1954), the United States brought a civil action under Section 1 of the Sherman Act, 15 U.S.C. 1, which requires proof of a restraint on interstate commerce. The district court dismissed, holding that the complaint lacked factual allegations concerning an effect on interstate commerce (347 U.S. at 188). This Court reversed because the fact that interstate commerce had been affected was adequately alleged in the complaint (*ibid.*).

[5]The petition refers to Section 302(b) of the Act, 43 U.S.C. 1732(b) (Pet. 25). The complaint, on the other hand, referred to Sections 304(b), 305(a), 501-504, and 601(c) of the Act, 43 U.S.C. 1734(b), 1735(a), 1761-1764, 1781(c) (Pet. App. A-5 to A-6).

relevant statutes and, without deciding whether petitioners had acquired something akin to contract rights under the Mining Law of 1872, concluded that no alteration of those "rights" had yet taken place or been threatened pursuant to those statutes. We rely upon the thorough treatment of this issue by the court below (Pet. A-75 to A-77).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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IN THE

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Petitioners,

v.

JAMES G. WATT, Secretary of the Interior of the United States of America,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT
In Case No. 78-2669

PETITIONERS' RESPONSE TO RESPONDENT'S BRIEF IN OPPOSITION TO REVIEW ON CERTIORARI

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No. 81-130

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1981

WESTERN MINING COUNCIL, ET AL.,

Petitioners,

v.

JAMES G. WATT, Secretary of the Interior of the United States,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
In Case No. 78-2669

PETITIONERS' RESPONSE TO RESPONDENT'S BRIEF OPPOSING REVIEW ON CERTIORARI

STATEMENT

The Court of Appeals affirmed the decision of the Magistrate approved by the District Court, dismissing plaintiffs' complaint for alleged failure to state a claim. The reason for dismissing the complaint was plaintiffs' alleged lack of standing to challenge the constitutionality of sections

of the Federal Land Policy and Management Act of 1976, (FLPMA), because plaintiffs had not as yet suffered or been threatened with prosecution, imprisonment, arrest without warrant, or search and seizure without warrant under Section 303 (a),(c) of the Act, 43 USC 1733.

Plaintiff mining claimants alleged that the defendant "is engaged in the enforcement through the agency of the Bureau of Land Management of the provisions of the Act of October 21, 1976 [FLPMA]" Complaint A-3, Paragraph 8.

We cannot agree with respondent's Statement of the Case. The Court should not be misled by the substitution of "possible" for "practical" on page 4 of the respondent's Brief. The statute states:

> "Prior to the promulgation of such rules and regulations, such lands shall be administered under existing rules and regulations concerning such lands to the extent practical." §310, 43 USC 1740 (emphasis added.)

Nor should the Court be misled by the statement at p. 7 of respondent's brief:

> "...it was not even alleged that regulations had been drafted or proposed, and obviously therefore, both their applicability to petitioners and their content were unknown."

This mistakes the issue, for the challenge is not directed against the regulations but against vagueness in the statutory grant of power. The existing regulations, promulgated without authorization in 1974, and authorized in 1976 "to the extent practical" by FLPMA, are well known. See Stanley Dempsey, "Forest Service Regulations Concerning the Effect of Mining Operations on Surface Resources", Natural Resources Lawyer Vol. VIII No. 3, Journal of the Section of Natural Resources Law, American Bar Association. Defendant's proposed regulations for "Surface Management of Public Land Under U.S. Mining Laws", published in the Federal Register, Vol. 41 No. 235, Dec. 6, 1976, before the complaint was filed, are well known.

We do not agree that petitioners alleged only conclusions of law. We agree that facts alleged in the complaint must be taken as true. See Complaint A-2 to 10.

We do agree with respondent's statement of petitioners' position: "the [Secretary] or his delegates have a free hand to make criminal any activity which [he or his subdelegates] may choose to deem 'unnecessary or undue degradation of the lands' and the Act makes such activity a crime "before [he] or his delegates have even described it." App. A-7; Resp. Br. p. 4.

And we agree with respondent's statement of petitioners' position "that certain provisions of FLPMA altered "contracts" they had made with the government pursuant to the mining law of 1872." "By adding additional conditions, the petitioners contended, the contracts were altered, in violation of the "Due Process Clause." Resp. Br. p. 5.

The last sentence of Section 302 (b), 43 USC 1732 amends the Mining Law of 1872 and impairs the rights of locators by providing: "In managing the public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands." It grants to the Secretary unlimited power in his absolute discretion to permit or deny their vested rights to owners of mining claims retroactively. It takes from plaintiff mining claim owners their right to mine vested under the mining law and grants to the Secretary power to repeal the mining law of 1872 by administrative action.

No definition or guideline in the statute limits the authority which the Secretary or his subdelegates in the field are given to act to prevent whatever may in their eyes be "unnecessary degradation" of lands. The vagueness of the authority granted by FLPMA created an immediate need

for declaratory judgment when enactment of FLPMA transformed the miners' statutory right to use, occupy and develop public lands into an uncertain privilege, dependent upon the unguided authority given to administrative personnel to declare a mining operation "unnecessary degradation of the lands" and to take action on the spot to enforce their orders by criminal sanctions under Section 303 (43 USC 1733).

Contrary to respondent's argument, dismissal of plaintiffs' complaint for lack of standing is in direct conflict with Doe v. Bolton, 410 U.S. 179 (1973), a recent pronouncement of this Court which should be followed here over the earlier cases urged by the respondent. In Bolton, although the target group (physicians) had not been prosecuted or threatened with prosecution, they had standing to challenge the constitutionality of an anti-abortion statute. Similarly, in Epperson v. Arkansas, 393 U.S.

97 (1968), the plaintiff was not required to risk prosecution before challenging an anti-evolution statute.

The present case meets the test for availability of declaratory judgment stated in Diamond Shamrock Corp. v. Lumbermen's Mutual Cas. Co., 416 F2d 707 (CA Ill. 1969). There is reasonable apprehension of liability. It meets the test of ripeness, for enactment of FLPMA confronted the miners at once with a drastic change in the status of their occupation. Subjection of the miners' right to work their claims to dictation by agency personnel impaired plaintiffs' property rights in mining claims which they were working to obtain full ownership under the terms held out by the mining law. A pre-enforcement challenge is appropriate here under the doctrine of Abbot Laboratories v. Gardner, 387 US 136 (1967), for the Act requires an immediate and significant change in the conduct of plaintiffs' affairs with serious penalties attached to noncompliance.

This case presents a justiciable controversy of sufficient immediacy and reality between the adverse interests of the Secretary, charged with enforcement of FLPMA and the plaintiffs. This Court held in Tennessee Power Co. v. TVA, 306 U.S. 118, that a "case of actual controversy"which makes appropriate a court's declaration of the "rights and other legal relations of any interested party seeking such declaration" is present when the plaintiff alleges injury to "a legal right, one of property, one arising out of contract, one protected against tortious invasion, or one founded on a statute which confers a privilege." Id. at 137-138.

The amendment of the mining law made by FLPMA impairs retroactively the right previously granted to plaintiffs by the sovereign to extract minerals, which is a part of the contract between plaintiffs and the sovereign arising under 30 USC §§ 22, 26, 35, and 612, set out in the Petition

pp. 8-10.

The vested property interest of the locator of a mining claim has been recognized by this Court many times. See Belk v. Meagher,104 U.S. 279; Noyes v. Mantle, 127 U.S. at 351; Manuel v. Wulff, 152 U.S. 505, 510-511; Elder v. Wood, 208 U.S. 226; Bradford v. Morrison, 212 U.S. 389; Wilbur v. Krushnic, 280 U.S. 306; Union Oil Co. of California v. Smith, 249 U.S. 337, 348-349; Cole v. Ralph, 252 U.S. 286.

Rights arising out of contract are protected by the Fifth Amendment. Lynch v. United States,292 U.S. 571, 579 (1934). FLPMA substitutes permission from the Secretary or his subdelegates, without whose acquiescence mining may no longer disturb the surface of plaintiffs' mining claims, in place of the vested, statutory right to mine previously granted by the sovereign. This impairment of vested rights created a justiciable controversy suitable for declaratory judgment.

CONCLUSION

Grant of review under a writ of certiorari would uphold the usefulness of the Declaratory Judgments Act, 28 USC §2201 for the settlement of controversies before they ripen into violations of law or a breach of duty. The constitutionality of the challenged provisions of FLPMA should be decided on the merits to avoid burdening the courts with a multitude of cases which otherwise are certain to arise. Therefore, petitioners respectfully urge that a writ of certiorari be granted.

October 27, 1981.

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